

Mark Scheme for June 2013

OCR (Oxford Cambridge and RSA) is a leading UK awarding body, providing a wide range of qualifications to meet the needs of candidates of all ages and abilities. OCR qualifications include AS/A Levels, Diplomas, GCSEs, Cambridge Nationals, Cambridge Technicals, Functional Skills, Key Skills, Entry Level qualifications, NVQs and vocational qualifications in areas such as IT, business, languages, teaching/training, administration and secretarial skills.

It is also responsible for developing new specifications to meet national requirements and the needs of students and teachers. OCR is a not-for-profit organisation; any surplus made is invested back into the establishment to help towards the development of qualifications and support, which keep pace with the changing needs of today's society.

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.

© OCR 2013

Annotations

Annotation	Meaning
	AO2+
	Point 2 (Q7-8)
	Point 3 (Q7-8)
	Point 4 (Q7-8)
	Point 5 (Q7-8)
	AO2
	Alternative reasoning in Q7-8
	Case (Q1-6) / reference to statutory provisions
	Expansion of developed point (Q1-Q6)
	Case - name only
	Not relevant / page seen
	Repetition/or where it refers to a case this indicates that the case has already been noted by examiner
	AO1 / Point 1 (Q7-8)
	Sort of / Accurate facts but wrong case name or no name (Q1-Q6)

Subject-specific Marking Instructions

Before you commence **marking each question** you must ensure that you are familiar with the following:

- the requirements of the specification
- these instructions
- the exam questions (found in the exam paper which will have been emailed to you along with this document)
- levels of assessment criteria *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 commentaries

*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 the '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 that this to be the case you should discuss the candidates answer 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 (in some units questions may contain both AO1 and AO2 marks) use the levels of assessment criteria **and** the guidance contained within the mark scheme to establish which level the response achieves. As per point 10 of the above marking instructions, when determining which **level** to award start at the **highest*** level and work down until you reach the level that matches the answer.

Once you have established the correct level to award to the response you need to determine the mark within the level. The marks available for each level differ between questions. Details of how many marks are available per level are provided in the Guidance column. Where there is more than one mark available within a level you will need to assess where the response 'sits' within that level. Guidance on how to award marks within a level is provided in point 10 of the above marking instructions, with the key point being that you start at the **middle*** of each level and work outwards until you reach the **mark** that the response achieves.

Answers, which contain no relevant material at all, will receive no marks.

*** Remember: when awarding the level you work from top downwards, when awarding the mark you work from the middle outwards.**

Awarding Assessment Objective 3

AO3 marks are awarded based on the marks achieved for either AO1, AO2 or in some cases, the total of AO1 and AO2. You must refer to each question's mark scheme for details of how to calculate the AO3 mark.

Rubric

What to do for the questions the candidate has not answered?

The rubric for G153 instructs candidates to answer **three** questions; one from Section A, one from Section B and one from Section C. For the questions the candidate has not answered you should record NR (no response) in the mark column on the right-hand side of the screen. Do **not** record a 0.

What to do for the candidate who has not complied with the rubric either by answering more than three questions or by answering more or less Section A, B or C questions than is permitted?

This is a very rare occurrence. Mark all questions the candidate has answered. Scoris will work out what the overall highest mark the candidate can achieve whilst conforming to the rubric. It will **not** 'violate' the rubric

Blank pages and missed answers

Sometimes candidates will skip a few pages in their answer booklet and then continue their answer. To be sure you have not missed any candidate response when you come to mark the last question in the script you must check every page of the script and annotate any blank pages with an annotation.

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



You must also check any additional pages eg A, A1 etc, which the candidate has chosen to use. Before you begin marking, use the Linking Tool to 'link' any additional page(s) to the relevant question(s) and mark the response as normal.

SECTION A

Question	Answer	Marks	Guidance													
1*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain the role of causation:</p> <ul style="list-style-type: none"> • Essential element when looking to establish <i>actus reus</i> in result crimes • Must be evidence to show defendant caused the consequence. <p>Explain causation in fact:</p> <ul style="list-style-type: none"> • ‘but for’ test – without the defendant’s act the prohibited consequence would not have occurred – <i>White, Roberts, Pagett</i>. <p>Explain causation in law:</p> <ul style="list-style-type: none"> • Defendant’s act must be more than minimal cause of the harm – <i>Kimsey</i> • Defendant must not accelerate the victim’s death – <i>Adams</i> • Defendant must take the victim as they find them – <i>Holland, Blaue, Dear</i>. <p>Explain that the chain of causation can be broken by an intervening act:</p> <ul style="list-style-type: none"> • Medical treatment – <i>Smith, Cheshire, Jordan</i> • Life support machines – <i>Malcherek and Steele</i> • Victim’s own act and ‘daftness’ – <i>Roberts, Williams and Davis, Marjoram, Corbett</i> • Free voluntary and informed action of third parties – <i>Pagett, Haystead, Michael</i> • Explain coincidence and doctrine of continuing acts – <i>Thabo Meli, Church, Fagan v MPC, Le Brun</i>. <p>Credit any other relevant cases. Credit any other relevant points.</p>	25	<table border="1" data-bbox="1384 288 1839 501"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21–25</td> </tr> <tr> <td>4</td> <td>16–20</td> </tr> <tr> <td>3</td> <td>11–15</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>		AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
AO1 Levels	AO1 Marks															
5	21–25															
4	16–20															
3	11–15															
2	6–10															
1	1–5															

Question	Answer	Marks	Guidance												
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss any or all of the following areas with regard to causation and its need for reform:</p> <ul style="list-style-type: none"> • Does the issue of causation have moral base meaning blame plays greater part than objective factual proof which makes it hard to amend the law? • Fairness of causation in fact and ‘but for’ test, especially pragmatic nature of test and influence can have on jury decision-making which means there is a need to reform • But for test– <i>Pageitt</i> provides practical/moral solution when police have to intervene but also takes into consideration unfairness of allocating blame if no connection • Difficulty of proving causation in law, something which could be improved by reform • Influence of policy when doctors and emergency services involved and need to make lines clearer through reform • Policy of courts seems to uphold the rights of the medical profession to work without fear of prosecution. Arguably fair and morally correct that D responsible for the death of V they put in hospital anyway so doctors who step in to save V should not be held responsible morally • Fairness of daftness and thin skull tests and need for greater clarity • Lack of clarity on role of third parties which could be addressed by reform • Problems when victim refuses treatment and an area which needs to be revisited • Life support cases - unfair for D to escape liability when caused so much harm. Doctors not ending life but rather taking support away • Role of fright or flight reflex and need for clarification • Difficulties of coincidence and continuing acts which could be addressed in reforms 	20	<table border="1" data-bbox="1384 276 1839 488" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">17–20</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">13–16</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">9–12</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">5–8</td> </tr> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p>Level 4 – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p>Level 3 – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p>Level 2 – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p>Level 1 – an awareness of the area of law identified by the question.</p> <p>For level 5 responses must consider both sides of the argument and address proposals for reform.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
AO2 Levels	AO2 Marks														
5	17–20														
4	13–16														
3	9–12														
2	5–8														
1	1–4														

Question	Answer	Marks	Guidance													
	<ul style="list-style-type: none"> • Victim's own act - arguably in <i>Dear D</i> should only have been charged with section 18 OAPA as maximum life sentence suitable punishment whilst recognising contributory acts of V • Possibility of reform as in DCC Clause 17 and areas such as medical cases and 'Year and a Day Rule Act 1996' • Reach a sensible conclusion. • Credit any other relevant point(s). • Reach a sensible conclusion. <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, punctuation and spelling.</p>	5	<table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th data-bbox="1384 459 1675 499">AO1 + AO2 Marks</th> <th data-bbox="1675 459 1861 499">AO3 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1384 499 1675 531" style="text-align: center;">37–50</td> <td data-bbox="1675 499 1861 531" style="text-align: center;">5</td> </tr> <tr> <td data-bbox="1384 531 1675 563" style="text-align: center;">28–36</td> <td data-bbox="1675 531 1861 563" style="text-align: center;">4</td> </tr> <tr> <td data-bbox="1384 563 1675 595" style="text-align: center;">19–27</td> <td data-bbox="1675 563 1861 595" style="text-align: center;">3</td> </tr> <tr> <td data-bbox="1384 595 1675 627" style="text-align: center;">10–18</td> <td data-bbox="1675 595 1861 627" style="text-align: center;">2</td> </tr> <tr> <td data-bbox="1384 627 1675 659" style="text-align: center;">1–9</td> <td data-bbox="1675 627 1861 659" style="text-align: center;">1</td> </tr> </tbody> </table>		AO1 + AO2 Marks	AO3 Marks	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
AO1 + AO2 Marks	AO3 Marks															
37–50	5															
28–36	4															
19–27	3															
10–18	2															
1–9	1															

Question	Answer	Marks	Guidance												
2*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define the Criminal Attempts Act 1981 - codifying legislation intended to provide key definitions of <i>actus reus</i> and <i>mens rea</i>. Explain, in outline, its origins - last act/Rubicon test, test of sufficient proximity, series of acts test – <i>Eagleton, Stonehouse, Robinson, Boyle and Boyle</i>.</p> <p>Explain <i>actus reus</i>:</p> <ul style="list-style-type: none"> Section 1 (1) – doing an act which is more than merely preparatory – <i>Gullefer, Jones, Campbell, Geddes, Tosti and White, Mason</i>. <p>Explain <i>mens rea</i>:</p> <ul style="list-style-type: none"> Intention – <i>Widdowson, Whybrow, Mohan, Walker and Hayles</i> Recklessness in relation to consequences – <i>AG Ref. (No. 3 of 1992)(1994)</i> Conditional intent – <i>Easom, Husseyn, AG Ref. (No. 1 and 2 of 1979)(1979)</i>. <p>Explain impossibility:</p> <ul style="list-style-type: none"> Section 1 (2) and section 1 (3) – <i>Anderton v Ryan, Shivpuri, Taaffe, Jones (2007)</i>. <p>Credit any other relevant cases. Credit any other relevant points.</p>	25	<table border="1" data-bbox="1384 252 1839 467"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21–25</td> </tr> <tr> <td>4</td> <td>16–20</td> </tr> <tr> <td>3</td> <td>11–15</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
AO1 Levels	AO1 Marks														
5	21–25														
4	16–20														
3	11–15														
2	6–10														
1	1–5														

Question	Answer	Marks	Guidance													
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss any or all of the following areas:</p> <p>Best:</p> <ul style="list-style-type: none"> • Need for reform addressed due to several problematic tests at common law • Desirable to stop criminal behaviour before harm caused • Essential to give police chance to stop criminals before offences committed • Need to strike balance with too early intervention as risk of punishing mere contemplation or minimal activity has been addressed • Test which allows jury to make common sense decisions. <p>Worst:</p> <ul style="list-style-type: none"> • Cases suggest that jury common sense test does not always work well common sense • Practical difficulties inherent in test and consequent inconsistencies • Problematic issue of impossibility • Issues relating to fine distinction between thought crime and attempt • <i>Mens rea</i> issues, especially in attempted murder • Sentencing inconsistencies • Alternative methods – eg US model • Questionable effectiveness of current law as a deterrent • Uncertainty created by recent change in Law Commission position • Credit references to criminal preparation • Credit any other relevant point(s). • Reach a sensible conclusion. <p>Explain proposals for reform by the Law Commission in Report No 318:</p> <ul style="list-style-type: none"> • Inclusion of conditional intent • Creation of attempted murder by omission 	20	<table border="1" data-bbox="1384 217 1839 424"> <thead> <tr> <th data-bbox="1384 217 1615 248">AO2 Levels</th> <th data-bbox="1615 217 1839 248">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1384 248 1615 280">5</td> <td data-bbox="1615 248 1839 280">17–20</td> </tr> <tr> <td data-bbox="1384 280 1615 312">4</td> <td data-bbox="1615 280 1839 312">13–16</td> </tr> <tr> <td data-bbox="1384 312 1615 344">3</td> <td data-bbox="1615 312 1839 344">9–12</td> </tr> <tr> <td data-bbox="1384 344 1615 376">2</td> <td data-bbox="1615 344 1839 376">5–8</td> </tr> <tr> <td data-bbox="1384 376 1615 408">1</td> <td data-bbox="1615 376 1839 408">1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p>Level 4 – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p>Level 3 – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p>Level 2 – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p>Level 1 – an awareness of the area of law identified by the question.</p> <p>For Level 5 responses must consider both sides of the argument.</p>		AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
AO2 Levels	AO2 Marks															
5	17–20															
4	13–16															
3	9–12															
2	5–8															
1	1–4															

Question			Answer	Marks	Guidance													
			<ul style="list-style-type: none"> Where substantive offence has fault requirements not involving negligence in relation to fact or circumstance should be possible to convict defendant of attempting substantive offence if D possessed those fault requirements at relevant time. 															
			<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, punctuation and spelling.</p>	5	<table border="1"> <thead> <tr> <th>AO1 + AO2 Marks</th> <th>AO3 Marks</th> </tr> </thead> <tbody> <tr> <td>37–50</td> <td>5</td> </tr> <tr> <td>28–36</td> <td>4</td> </tr> <tr> <td>19–27</td> <td>3</td> </tr> <tr> <td>10–18</td> <td>2</td> </tr> <tr> <td>1–9</td> <td>1</td> </tr> </tbody> </table>	AO1 + AO2 Marks	AO3 Marks	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1	
AO1 + AO2 Marks	AO3 Marks																	
37–50	5																	
28–36	4																	
19–27	3																	
10–18	2																	
1–9	1																	

Question	Answer	Marks	Guidance												
3*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define and explain defence of duress:</p> <ul style="list-style-type: none"> • Pressure giving rise to complete defence when victim acts under threats • Defence found in common law • Threat must be of death or serious bodily harm – <i>Valderrama-Vega</i> • Threat must be to defendant or someone close to them – <i>Hasan, Wright</i> • Threat must generally be immediate or almost immediate – <i>Hudson and Taylor, Hasan</i> • Defendant must be judged by their perception of threat – <i>Safi</i> • Must be <i>nexus</i> between threat and offence committed – <i>Cole</i> • Limits when voluntary involvement in criminal enterprise – <i>Sharp, Shepherd, Heath, Hasan, Rahman, Lal</i> • Unavailable for murder, participation in murder or attempted murder – <i>Howe, Wilson, Gotts</i> • Standard test – <i>Graham, Hasan</i> • Self-induced characteristics must be excluded, other characteristics may be excluded – <i>Bowen, Flatt</i>. <p>Define and explain defence of necessity (including duress of circumstances):</p> <p><i>Dudley and Stephens, Buckoke, Willer, Conway, Martin, Pommell, Cairns, Re A, Shayler</i></p> <ul style="list-style-type: none"> • Necessity involves the claim that D's conduct was not harmful because on a choice of two evils the choice of avoiding the greater harm was justified • Duress of circumstances requires that D must have acted in order to avoid a perceived threat of imminent death or serious injury and with no reasonable opportunity for escaping from the threat or contacting the authorities. 	25	<table border="1" data-bbox="1384 229 1839 443"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21–25</td> </tr> <tr> <td>4</td> <td>16–20</td> </tr> <tr> <td>3</td> <td>11–15</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p> <p>For Level 5 responses must consider both duress and necessity.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
AO1 Levels	AO1 Marks														
5	21–25														
4	16–20														
3	11–15														
2	6–10														
1	1–5														

Question	Answer	Marks	Guidance													
	<ul style="list-style-type: none"> • Explain that may exist in the public interest, when protection of self or property is needed and when a person has to be assisted without their consent – <i>DPP v Harris, Buckoke v GLC, Re F.</i> • Credit any other relevant case(s) • Credit any other relevant point(s). 															
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss any or all of the following areas:</p> <p>Invaluable:</p> <ul style="list-style-type: none"> • Desire to take account of fact that defendants act differently under extreme pressure • Requirement for humanity if law to be just and effective • Need for juries to put themselves in shoes of defendant • Evolution of duress of circumstances to alleviate harshness of law • Now some place for necessity in law. <p>Inconsistency:</p> <ul style="list-style-type: none"> • Difficulties when juries put themselves in shoes of defendant • Problem that doing wrong can arguably never be right • Completeness of defence may make it harder to succeed with and lead to inconsistent application • Does not fit with other defences such as loss of control in murder • Problematic for juries to apply in terms of type of threat and its effect • Policy issues relating to murder and association with known criminals and terrorists can lead to inconsistency • Inconsistency as not available to murder but available for section 18 OAPA 1861 • Policy issues relating to necessity can lead to inconsistency • Remaining problem of over-reliance on discretion to prosecute which can be very inconsistent • Defence as concession to human frailty is so limited that 	20	<table border="1" data-bbox="1384 443 2074 651"> <thead> <tr> <th data-bbox="1384 443 1727 481">AO2 Levels</th> <th data-bbox="1727 443 2074 481">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1384 481 1727 520">5</td> <td data-bbox="1727 481 2074 520">17–20</td> </tr> <tr> <td data-bbox="1384 520 1727 558">4</td> <td data-bbox="1727 520 2074 558">13–16</td> </tr> <tr> <td data-bbox="1384 558 1727 596">3</td> <td data-bbox="1727 558 2074 596">9–12</td> </tr> <tr> <td data-bbox="1384 596 1727 635">2</td> <td data-bbox="1727 596 2074 635">5–8</td> </tr> <tr> <td data-bbox="1384 635 1727 651">1</td> <td data-bbox="1727 635 2074 651">1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p>Level 4 – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p>Level 3 – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p>Level 2 – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p>Level 1 – an awareness of the area of law identified by the question.</p> <p>For Level 5 responses must consider both sides of the argument.</p>		AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
AO2 Levels	AO2 Marks															
5	17–20															
4	13–16															
3	9–12															
2	5–8															
1	1–4															

Question			Answer	Marks	Guidance													
			<p>defence does not really fulfil its function</p> <ul style="list-style-type: none"> Proposals for change and any impact they may have if enacted as to whether they will solve these problems Credit any other relevant point(s). Reach a sensible conclusion. 															
			<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, punctuation and spelling.</p>	5	<table border="1"> <thead> <tr> <th>AO1 + AO2 Marks</th> <th>AO3 Marks</th> </tr> </thead> <tbody> <tr> <td>37–50</td> <td>5</td> </tr> <tr> <td>28–36</td> <td>4</td> </tr> <tr> <td>19–27</td> <td>3</td> </tr> <tr> <td>10–18</td> <td>2</td> </tr> <tr> <td>1–9</td> <td>1</td> </tr> </tbody> </table>		AO1 + AO2 Marks	AO3 Marks	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
AO1 + AO2 Marks	AO3 Marks																	
37–50	5																	
28–36	4																	
19–27	3																	
10–18	2																	
1–9	1																	

SECTION B

Question	Answer	Marks	Guidance													
4*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define involuntary manslaughter as being of three types:</p> <ul style="list-style-type: none"> • Unlawful act/constructive manslaughter • Gross negligence manslaughter • Subjective reckless manslaughter. <p>Define and explain unlawful and dangerous act/constructive manslaughter:</p> <ul style="list-style-type: none"> • Needs to be a positive and unlawful act – <i>Mitchell, Larkin, Church</i> • Unlawful act should be objectively dangerous – <i>Dawson, Watson</i> • Positive act be done with the appropriate <i>mens rea</i> – <i>Goodfellow, Newbury and Jones</i> • Requirement that the chain of causation be intact and death ensue • Reasonable man needs to foresee the risk of some harm to some other person but not necessarily the harm which results. <p>Define and explain gross negligence manslaughter – <i>Bateman, Andrews, Adomako, Wacker, Misra</i>:</p> <ul style="list-style-type: none"> • Needs to be a duty to care • Duty to care must be breached • Must be risk of death and death occurs • Defendant’s negligence must be so gross that criminal in eyes of jury <p>Define and explain subjective reckless manslaughter:</p> <ul style="list-style-type: none"> • Was there risk of death or serious harm to the victim? • Did defendant see risk and decide to run it? – <i>Lidar</i>. <p>Define and explain causation (outline only):</p> <ul style="list-style-type: none"> • Causation in fact – ‘but for’ test – <i>White, Pagett</i> 	25	<table border="1" data-bbox="1384 288 2069 501"> <thead> <tr> <th data-bbox="1384 288 1727 323">AO1 Levels</th> <th data-bbox="1727 288 2069 323">AO1 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1384 323 1727 359">5</td> <td data-bbox="1727 323 2069 359">21–25</td> </tr> <tr> <td data-bbox="1384 359 1727 394">4</td> <td data-bbox="1727 359 2069 394">16–20</td> </tr> <tr> <td data-bbox="1384 394 1727 429">3</td> <td data-bbox="1727 394 2069 429">11–15</td> </tr> <tr> <td data-bbox="1384 429 1727 464">2</td> <td data-bbox="1727 429 2069 464">6–10</td> </tr> <tr> <td data-bbox="1384 464 1727 501">1</td> <td data-bbox="1727 464 2069 501">1–5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p> <p>Possible to reach maximum marks without consideration of subjective reckless manslaughter.</p>		AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
AO1 Levels	AO1 Marks															
5	21–25															
4	16–20															
3	11–15															
2	6–10															
1	1–5															

Question	Answer	Marks	Guidance												
	<ul style="list-style-type: none"> • Causation in law – operative and substantial test – <i>Cheshire, Smith</i>. <p>Explain the law relating to omissions:</p> <ul style="list-style-type: none"> • Contractual duty – <i>Pittwood, Dytham, Adomako, Yaqoob</i> • Credit any other relevant case(s). • Credit any other relevant point(s). 														
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Identify gross negligence manslaughter Identify unlawful and dangerous act/constructive manslaughter Identify subjective reckless manslaughter Identify omissions.</p> <p>In the case of Robert:</p> <ul style="list-style-type: none"> • Most likely offence is unlawful and dangerous act/constructive manslaughter • There is an unlawful and positive act when Robert pushes Thomas – this could be a battery or s47 OAPA • This act is objectively dangerous as the river is fast-flowing • This is done intentionally in the course of an argument • The chain of causation could remain intact but also credit discussion of possible break • As the reasonable man needs to foresee some harm but not necessarily the serious harm that results the jury may well find Robert liable. <p>In the case of Kieran:</p> <ul style="list-style-type: none"> • Most likely offence is gross negligence manslaughter by omission • As an ambulance driver Kieran has a contractual obligation when he is working • Kieran has a duty to respond promptly to 999 calls • Kieran breaches his duty as he has gone home 	20	<table border="1" data-bbox="1384 496 2074 708" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">AO2 Levels</th> <th style="text-align: center;">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">17–20</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">13–16</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">9–12</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">5–8</td> </tr> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation, and reaching a cogent, logical and well-informed conclusion.</p> <p>Level 4 – identification of most of relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion.</p> <p>Level 3 – identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion.</p> <p>Level 2 – identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion.</p> <p>Level 1 – identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
AO2 Levels	AO2 Marks														
5	17–20														
4	13–16														
3	9–12														
2	5–8														
1	1–4														

Question	Answer	Marks	Guidance													
	<ul style="list-style-type: none"> • This causes death • Kieran's negligence could be seen as sufficiently gross as there was a risk of death but would depend whether his omission hastened Thomas's death. • Credit a logical discussion that Kieran is not grossly negligent. <p>In the case of Jenny:</p> <ul style="list-style-type: none"> • Most likely charge is gross negligence manslaughter by a positive act. • Although a student Jenny owes a duty to Thomas and she tries to discharge this by calling for help • She decides to help and this could go beyond her contractual obligation • Jenny's breach does cause death as she injects Thomas in the wrong place • Jury may find her liable but could also suggest that she did her best and that her mistake was because she was rushing to help and was due to a lack of experience • Also in her favour that other staff busy but Jenny did try to contact them and courts unwilling to find doctors responsible unless they fall far below the professional standard reasonably expected. • Credit appropriate application of subjective reckless manslaughter. <p>Credit any other relevant point(s). Reach a sensible conclusion.</p>		<p>For Level 5 responses must cover unlawful act manslaughter and gross negligence manslaughter. Reckless manslaughter is not required for full marks.</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, punctuation and spelling.</p>	5	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">AO1 + AO2 Marks</th> <th style="text-align: center;">AO3 Marks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">37–50</td> <td style="text-align: center;">5</td> </tr> <tr> <td style="text-align: center;">28–36</td> <td style="text-align: center;">4</td> </tr> <tr> <td style="text-align: center;">19–27</td> <td style="text-align: center;">3</td> </tr> <tr> <td style="text-align: center;">10–18</td> <td style="text-align: center;">2</td> </tr> <tr> <td style="text-align: center;">1–9</td> <td style="text-align: center;">1</td> </tr> </tbody> </table>		AO1 + AO2 Marks	AO3 Marks	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
AO1 + AO2 Marks	AO3 Marks															
37–50	5															
28–36	4															
19–27	3															
10–18	2															
1–9	1															

Question	Answer	Marks	Guidance													
5*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define and explain theft - charged under Theft Act 1968:</p> <ul style="list-style-type: none"> • Section 1 – dishonest appropriation of property belonging to another with intention to deprive other of it • Section 3 – appropriation – any assumption of any of rights of owner with or without consent – <i>McPherson, Lawrence, Morris, Gomez, Hinks</i> • Section 4 – property - can be tangible or intangible. Section 4(3) – flowers, unless growing wild, are property • Section 5 – belonging to another – ownership, possession or control – <i>Turner</i> • Section 5 (4) – legal obligation to restore – <i>AG Ref 1/83</i> • Section 2 – dishonesty – 2 (1) (a) – defendant not dishonest if honestly believe they have legal right to property, 2 (1) (b) – defendant not dishonest if honestly believe owner would consent – <i>Holden</i>, 2 (1) (c) – defendant not dishonest if honestly believe owner cannot be found having taken reasonable steps – <i>Small</i>; if none of above apply the jury apply common sense view <i>Feely</i>, or <i>Ghosh</i> – was defendant dishonest by standards of reasonable man and, if so, did defendant know dishonest by that standard? • Section 6 – intention to permanently deprive – to take forever or for period equivalent to outright taking – <i>Lloyd, Velumyl</i> • Credit any other relevant case(s). • Credit any other relevant point(s). 	25	<table border="1" data-bbox="1384 220 1839 432"> <thead> <tr> <th data-bbox="1384 220 1615 258">AO1 Levels</th> <th data-bbox="1615 220 1839 258">AO1 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1384 258 1615 296">5</td> <td data-bbox="1615 258 1839 296">21–25</td> </tr> <tr> <td data-bbox="1384 296 1615 335">4</td> <td data-bbox="1615 296 1839 335">16–20</td> </tr> <tr> <td data-bbox="1384 335 1615 373">3</td> <td data-bbox="1615 335 1839 373">11–15</td> </tr> <tr> <td data-bbox="1384 373 1615 411">2</td> <td data-bbox="1615 373 1839 411">6–10</td> </tr> <tr> <td data-bbox="1384 411 1615 432">1</td> <td data-bbox="1615 411 1839 432">1–5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>		AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
AO1 Levels	AO1 Marks															
5	21–25															
4	16–20															
3	11–15															
2	6–10															
1	1–5															

Question	Answer	Marks	Guidance													
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Identify the offence of theft In the case of William taking money out of till:</p> <ul style="list-style-type: none"> • <i>Actus reus</i> complete as William has appropriated property belonging to another • William might argue that not dishonest as he was the manager and would be able to replace the money before the shop opened – owner might see this differently • He might also argue no intention to permanently deprive as he is going to put the money back but he cannot replace the same notes • Offence complete. <p>In the case of William paying lower price for shirt:</p> <ul style="list-style-type: none"> • Appropriation as he has interfered with the owner’s rights by swapping labels and shirt is property of shop • Taking label off one shirt and sticking it on another suggests dishonesty and a jury is likely to see it as such • Offence complete. <p>In the case of William eating chocolate bar:</p> <ul style="list-style-type: none"> • Appropriated property belonging to another as chocolate bar belongs to shop • He is dishonest since he puts wrapper in his pocket suggesting intention to permanently deprive • Offence complete. <p>In case of William picking flowers:</p> <ul style="list-style-type: none"> • Appropriation of property belonging to another • Might not be dishonest if William argues he honestly believes owner of garden would not mind • Offence likely to be complete. <p>In the case of William and the change:</p> <ul style="list-style-type: none"> • Depends when realised had too much change. If time delay so not realistic to return will not be theft • Credit argument that theft is committed as William had a legal 	20	<table border="1" data-bbox="1384 217 1839 424" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">AO2 Levels</th> <th style="width: 50%;">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">17–20</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">13–16</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">9–12</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">5–8</td> </tr> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation, and reaching a cogent, logical and well-informed conclusion.</p> <p>Level 4 – identification of most of relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion.</p> <p>Level 3 – identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion.</p> <p>Level 2 – identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion.</p> <p>Level 1 – identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach.</p> <p>For Level 5 all situations must be covered.</p>		AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
AO2 Levels	AO2 Marks															
5	17–20															
4	13–16															
3	9–12															
2	5–8															
1	1–4															

Question			Answer	Marks	Guidance												
			obligation to restore • Likely there is no offence. Credit any other relevant point(s). Reach a sensible conclusion.														
			Assessment Objective 3 – Communication and presentation Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.	5	<table border="1"> <thead> <tr> <th>AO1 + AO2 Marks</th> <th>AO3 Marks</th> </tr> </thead> <tbody> <tr> <td>37–50</td> <td>5</td> </tr> <tr> <td>28–36</td> <td>4</td> </tr> <tr> <td>19–27</td> <td>3</td> </tr> <tr> <td>10–18</td> <td>2</td> </tr> <tr> <td>1–9</td> <td>1</td> </tr> </tbody> </table>	AO1 + AO2 Marks	AO3 Marks	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
AO1 + AO2 Marks	AO3 Marks																
37–50	5																
28–36	4																
19–27	3																
10–18	2																
1–9	1																

Question	Answer	Marks	Guidance													
6*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define and explain murder – unlawful killing of a human being with an intention to kill/inflict GBH.</p> <p>Define and explain causation (outline only):</p> <ul style="list-style-type: none"> • Causation in fact – ‘but for’ test – <i>White, Roberts, Pagett</i> • Causation in law – operative and substantial test – <i>Kimsey, Cheshire</i>. <p>Define and explain <i>mens rea</i> of murder:</p> <ul style="list-style-type: none"> • Direct intent – death/GBH is the defendant’s purpose and they set out to bring it about – <i>Mohan</i> <p>Define and explain defence of loss of control section 54 and section 55 Coroners and Justice Act 2009:</p> <ul style="list-style-type: none"> • Section 54 (1) (a) requires a loss of self-control • Section 54 (2) says it does not need to be sudden and is a jury question • Section 54 (3) normal person test – takes into account age, sex and circumstances of the defendant but a normal degree of tolerance and self-restraint is expected; all characteristics are relevant other than those which bear on general capacity for tolerance or self-restraint • Section 54 (4) defence does not apply if the defendant is acting out of revenge. • Section 55 requires one or both of two qualifying triggers to exist • Section 55 (3) qualifying trigger of fear of serious violence • Section 55 (4) qualifying trigger of a thing or things done or said which constitute circumstances of an extremely grave 	25	<table border="1" data-bbox="1384 220 1839 432"> <thead> <tr> <th data-bbox="1384 220 1615 258">AO1 Levels</th> <th data-bbox="1615 220 1839 258">AO1 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1384 258 1615 296">5</td> <td data-bbox="1615 258 1839 296">21–25</td> </tr> <tr> <td data-bbox="1384 296 1615 335">4</td> <td data-bbox="1615 296 1839 335">16–20</td> </tr> <tr> <td data-bbox="1384 335 1615 373">3</td> <td data-bbox="1615 335 1839 373">11–15</td> </tr> <tr> <td data-bbox="1384 373 1615 411">2</td> <td data-bbox="1615 373 1839 411">6–10</td> </tr> <tr> <td data-bbox="1384 411 1615 432">1</td> <td data-bbox="1615 411 1839 432">1–5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>		AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
AO1 Levels	AO1 Marks															
5	21–25															
4	16–20															
3	11–15															
2	6–10															
1	1–5															

Question	Answer	Marks	Guidance
	<p>character and cause D to have a justifiable sense of being seriously wronged – <i>Zebedee</i></p> <ul style="list-style-type: none"> • Section 55 (5) loss of self control was attributable to a combination of the matters mentioned in subsections (3) and (4) • Section 55 (6) disregard fear of serious violence which self-induced, sense of being seriously wronged if self-induced, sexual infidelity to be disregarded - <i>Clinton</i> <p>Define and explain defence of diminished responsibility Homicide Act 1957 as amended by section 52 Coroners and Justice Act 2009:</p> <ul style="list-style-type: none"> • Must be an abnormality of mental functioning – <i>Byrne</i> • Defendant must have a recognised medical condition – <i>Dietschmann, Jama, Seers</i> • Defendant must have been substantially impaired and unable to: understand the nature of their act, or form a rational judgment or exercise self-control • Abnormality must provide an explanation for defendant’s acts and omissions – must be causal link but need not be the only one • Role of intoxication – <i>Fenton, Gittens, Egan, Dietschmann, Hendy, Robson, Swan</i> • Role of alcoholism/Alcohol Dependency Syndrome – <i>Tandy, Inseal, Wood, Stewart.</i> <p>Define and explain defence of intoxication:</p> <ul style="list-style-type: none"> • Voluntary intoxication can be a defence to a crime of specific intent – <i>Lipman</i> • Voluntary intoxication is no defence to a crime of basic intent – <i>Majewski</i> • Involuntary intoxication can be a defence to a crime of specific or basic intent but hard to prove – <i>Kingston, Hardie.</i> • Credit any other relevant case(s). • Credit any other relevant point(s). 		

Question	Answer	Marks	Guidance													
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Identify murder. Identify voluntary manslaughter. Identify defence of loss of self-control. Identify defence of diminished responsibility.</p> <p>In the case of Jack’s death:</p> <ul style="list-style-type: none"> • Hayley stabbing Jack will satisfy the <i>actus reus</i> of unlawful killing • The use of a knife would suggest sufficient <i>mens rea</i> for murder. <p>In the case of defence of loss of self-control:</p> <ul style="list-style-type: none"> • There has been an act in that Hayley hears what Jack has said about Chris and he laughs at her when she starts to cry • The loss of self control does not need to be sudden and so could be linked to Jack’s earlier words or the breaking of the bracelet • Jack’s words may be a qualifying trigger if he spoke loudly intending Hayley to hear • The breaking of the bracelet and the staining of the jacket could also be a qualifying trigger • As Chris’s fiancé it is not unrealistic for Hayley to act as she does, especially when Jack tries to cuddle her. • Successfully raising the defence would reduce a conviction to voluntary manslaughter. <p>In the case of defence of diminished responsibility:</p> <ul style="list-style-type: none"> • The fact that Hayley has been prescribed tranquilisers may be enough to suggest an abnormality of mental function • This may make her unable to form a rational judgment or to 	20	<table border="1" data-bbox="1384 217 1839 424"> <thead> <tr> <th data-bbox="1384 217 1615 248">AO2 Levels</th> <th data-bbox="1615 217 1839 248">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1384 248 1615 280">5</td> <td data-bbox="1615 248 1839 280">17–20</td> </tr> <tr> <td data-bbox="1384 280 1615 312">4</td> <td data-bbox="1615 280 1839 312">13–16</td> </tr> <tr> <td data-bbox="1384 312 1615 344">3</td> <td data-bbox="1615 312 1839 344">9–12</td> </tr> <tr> <td data-bbox="1384 344 1615 376">2</td> <td data-bbox="1615 344 1839 376">5–8</td> </tr> <tr> <td data-bbox="1384 376 1615 408">1</td> <td data-bbox="1615 376 1839 408">1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation, and reaching a cogent, logical and well-informed conclusion.</p> <p>Level 4 – identification of most of relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion.</p> <p>Level 3 – identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion.</p> <p>Level 2 – identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion.</p> <p>Level 1 – identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach.</p> <p>For L5 candidate needs murder, loss of control and diminished responsibility but not necessarily intoxication.</p>		AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
AO2 Levels	AO2 Marks															
5	17–20															
4	13–16															
3	9–12															
2	5–8															
1	1–4															

Question	Answer	Marks	Guidance													
	<p>exercise self control, especially when Jack laughs at her and tries to cuddle her</p> <ul style="list-style-type: none"> • Although they are at a party there is no clear evidence that Hayley is intoxicated • There would appear to be a causal link between Hayley's mental state and her act. • Successfully raising the defence would reduce a conviction to voluntary manslaughter. <p>Credit discussion of a defence based on intoxication which could lead to Hayley have a defence to a charge of murder but not to a charge of involuntary manslaughter unless due to an unforeseen reaction to taking the tranquiliser.</p> <p>Credit any other relevant point(s). Reach a sensible conclusion.</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, punctuation and spelling.</p>	5	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th data-bbox="1384 767 1821 805">AO1 + AO2 Marks</th> <th data-bbox="1821 767 2076 805">AO3 Mark</th> </tr> </thead> <tbody> <tr> <td data-bbox="1384 805 1821 844" style="text-align: center;">37–50</td> <td data-bbox="1821 805 2076 844" style="text-align: center;">5</td> </tr> <tr> <td data-bbox="1384 844 1821 882" style="text-align: center;">28–36</td> <td data-bbox="1821 844 2076 882" style="text-align: center;">4</td> </tr> <tr> <td data-bbox="1384 882 1821 920" style="text-align: center;">19–27</td> <td data-bbox="1821 882 2076 920" style="text-align: center;">3</td> </tr> <tr> <td data-bbox="1384 920 1821 959" style="text-align: center;">10–18</td> <td data-bbox="1821 920 2076 959" style="text-align: center;">2</td> </tr> <tr> <td data-bbox="1384 959 1821 997" style="text-align: center;">1–9</td> <td data-bbox="1821 959 2076 997" style="text-align: center;">1</td> </tr> </tbody> </table>		AO1 + AO2 Marks	AO3 Mark	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
AO1 + AO2 Marks	AO3 Mark															
37–50	5															
28–36	4															
19–27	3															
10–18	2															
1–9	1															

SECTION C

Question	Answer	Marks	Guidance												
7	Potential answers may: Assessment Objective 2 – Analysis, evaluation and application														
(a)	P1 Reason that Ludmilla would need to show a defect of reason from a disease of the mind P2 Reason that Ludmilla's failure to take her insulin, is an internal factor (disease of the mind) P3 Reason that Ludmilla should not know the nature and quality of her act or that it is legally wrong P4 Reason that it is evident when Ludmilla says "What jar of coffee" that she does not know the nature and quality of her act P5 Conclude that the statement is accurate. <u>OR</u> P4a Reason that Ludmilla does know the nature and quality of the act as she is merely absent minded P5a Conclude that the statement is inaccurate.	5	<table border="1" data-bbox="1384 424 2076 635"> <thead> <tr> <th data-bbox="1384 424 1727 459">AO2 Levels</th> <th data-bbox="1727 424 2076 459">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1384 459 1727 494">5</td> <td data-bbox="1727 459 2076 494">5</td> </tr> <tr> <td data-bbox="1384 494 1727 529">4</td> <td data-bbox="1727 494 2076 529">4</td> </tr> <tr> <td data-bbox="1384 529 1727 564">3</td> <td data-bbox="1727 529 2076 564">3</td> </tr> <tr> <td data-bbox="1384 564 1727 600">2</td> <td data-bbox="1727 564 2076 600">2</td> </tr> <tr> <td data-bbox="1384 600 1727 635">1</td> <td data-bbox="1727 600 2076 635">1</td> </tr> </tbody> </table> <p data-bbox="1384 651 2016 715">Can accept either defect of reason or disease of mind for P1</p>	AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1
AO2 Levels	AO2 Marks														
5	5														
4	4														
3	3														
2	2														
1	1														
(b)	P1 Reason that Tony must have done an involuntary act P2 Reason that there is an involuntary act, which is Tony grabbing Vincent P3 Reason that there must be an external factor P4 Reason that Tony has taken his medication which is an external factor P5 Conclude that the statement is accurate. <u>OR</u> P4a Reason that as Tony has not taken his medication his act is caused by an internal factor	5													

Question		Answer	Marks	Guidance
		P5a Conclude that the statement is inaccurate		
	(c)	<p>P1 Reason that Tony would need to show a defect of reason from a disease of the mind</p> <p>P2 Reason that Tony has recovered from his seizure so there is no defect of reason.</p> <p>P3 Reason that Tony should not know the nature and quality of his act or that it is legally wrong</p> <p>P4 Reason that Tony does know the nature and quality of his act because he has recovered and asked Ludmilla out.</p> <p>P5 Conclude that the statement is inaccurate.</p>	5	Can accept either defect of reason or disease of mind for P1
	(d)	<p>P1 Reason that Ludmilla would need to show a defect of reason from a disease of the mind</p> <p>P2 Reason that Ludmilla's sleepwalking will be seen as an internal factor</p> <p>P3 Reason that Ludmilla should not know the nature and quality of her act or that it is legally wrong</p> <p>P4 Reason that because Ludmilla is sleepwalking, she does not know the nature and quality of her act</p> <p>P5 Conclude that the statement is accurate.</p>	5	Can accept either defect of reason or disease of mind for P1

Question		Answer	Marks	Guidance													
8		Potential answers may: Assessment Objective 2 – Analysis, evaluation and application															
	(a)	P1 Reason that assault requires a person to be put in apprehension of immediate and unlawful force P2 Reason that Martin’s words are a sufficient threat P3 Reason that the defendant must have intention or subjective recklessness P4 Reason that Martin does intend Simon to apprehend force P5 Conclude that the statement is accurate. OR P4a Reason that the mens rea is present but is negated by consent between professional sportsmen. P5a Conclude that the statement is inaccurate.	5	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>5</td> </tr> <tr> <td>4</td> <td>4</td> </tr> <tr> <td>3</td> <td>3</td> </tr> <tr> <td>2</td> <td>2</td> </tr> <tr> <td>1</td> <td>1</td> </tr> </tbody> </table>		AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1
AO2 Levels	AO2 Marks																
5	5																
4	4																
3	3																
2	2																
1	1																
	(b)	P1 Reason that battery is unlawful touching P2 Reason that Simon punching Martin is unlawful touching P3 Reason that there must be intention or subjective recklessness P4 Reason that Simon punches Martin deliberately P5 Conclude that statement is accurate.	5														
	(c)	P1 Reason that this offence requires infliction of a wound or GBH P2 Reason that a cracked rib is likely to be GBH P3 Reason that Simon must have intention or subjective recklessness to cause some harm P4 Reason that Simon has the <i>mens rea</i> required but as the tackle is within the rules of the game there is consent. P5 Conclude that statement is inaccurate.	5														

Question		Answer	Marks	Guidance
	(d)	P1 Reason that Ben must cause a wound or GBH P2 Reason that a broken jaw would be enough for GBH P3 Reason that Ben must have intention for serious harm caused P4 Reason that Ben has the mens rea and that his acts are outside the rules of the game. P5 Conclude that statement is accurate.	5	

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.

OCR (Oxford Cambridge and RSA Examinations)
1 Hills Road
Cambridge
CB1 2EU

OCR Customer Contact Centre

Education and Learning

Telephone: 01223 553998

Facsimile: 01223 552627

Email: general.qualifications@ocr.org.uk

www.ocr.org.uk

For staff training purposes and as part of our quality assurance programme your call may be recorded or monitored

Oxford Cambridge and RSA Examinations
is a Company Limited by Guarantee
Registered in England
Registered Office; 1 Hills Road, Cambridge, CB1 2EU
Registered Company Number: 3484466
OCR is an exempt Charity

OCR (Oxford Cambridge and RSA Examinations)
Head office
Telephone: 01223 552552
Facsimile: 01223 552553

© OCR 2013

