

# **Mark Scheme for January 2011**

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## SECTION A

- 1\* 'The current difficulties surrounding omissions in the *actus reus* of a crime are unavoidable but need to be resolved if the modern law is to be fair.'

Discuss the accuracy of this statement.

[50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	–
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers **MAY**:

**Assessment Objective 1**

(25)

Define *actus reus* – the conduct element of a crime

Explain that the general principle is to require a positive and voluntary act as part of proving the *actus reus*

Explain that some offences may be brought about by omission – a failure to act when there is a duty to do so:

- Statutory duty – created by Parliament in an effort to protect – section 1 Children and Young Persons Act 1933, section 5 Domestic Violence, Crime and Victims Act 1994, *Greener*
- Contractual duty – created by a contract of employment – *Pittwood, Adomako*
- Duty because of a relationship – usually between parent and child – *Gibbins and Proctor*
- Duty undertaken voluntarily – based on the concept of reliance – *Stone and Dobinson*
- Duty based on official position – usually related to public office – *Dytham*
- Duty based on creation of a dangerous situation – once this is created there is a need to act reasonably – *Miller, Santana-Bermudez*

Explain the particular difficulties surrounding involuntary manslaughter and omissions – *Lowe, Khan and Khan, Rogers, Kennedy*

Explain the particular position relating to doctors – *Bland*

Explain proposals for reform by the Law Commission.

**Assessment Objective 2****(20)**

Discuss any or all of the following areas:

- The relationship between moral and legal principles and their effect on behaviour
- The fairness of many crimes committed by omission being strict liability
- Problems of defining a duty and whether a person who has assumed a duty can be absolved from it?
- Is it fair to expect those bound by contracts of employment to act, especially if there is a chance of personal risk and should levels of duty be different for those who hold public office?
- Is it fair to impose a duty to act and there a difference between breaching a duty and failing to get involved?
- Lack of Good Samaritan law – consideration of where it does exist, whether it should be introduced and the form it would take
- Particular issues relating to doctors and in relation to creation of dangerous situations is there an overlap with the problem of coincidence?
- Problems arising when those who assume a duty are not competent to do so.

Reach any sensible conclusion

Candidates are unlikely to achieve the descriptor for level 5 AO2 without a discussion that focuses on both omissions and its problems. Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion also identifies the role of the judges, the role of Parliament, the Law Commission, potential avenues for reform or the influence of policy in decision-making.

**Assessment Objective 3****(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 2\* 'The present law relating to involuntary manslaughter serves neither the defendant nor the criminal justice system.'

Discuss the accuracy of this statement.

[50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	–
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers **MAY**:

### Assessment Objective 1

(25)

Define involuntary manslaughter – unlawful killing of a human being without the high level of mens rea required for murder

Explain that involuntary manslaughter covers a wide range of situations and this is reflected in the sentencing

Define unlawful act/constructive manslaughter:

- Unlawful act – this must be a criminal, positive act – *Lamb, Lowe, Goodfellow, Newbury and Jones, Watson*
- Dangerous act – this is measured by an objective test but can be against a person or property and there must be a risk of physical harm – *Larkin, Church, Mitchell, Goodfellow, Dawson, Watson*
- Unlawful act must cause death – *Cato, Dalby, Rogers, Kennedy*
- Mens rea is required for the initial unlawful act but there is no need to realise that the act is dangerous or unlawful, or to foresee a risk of harm – *Newbury and Jones*

Define gross negligence manslaughter – *Adomako*:

- There must be a duty of care to the victim – *Singh, Litchfield, Khan and Khan, Wacker*
- There must be a breach of that duty
- The breach of duty must cause death
- The defendant's failure must be so 'gross' in the eyes of the jury as to be criminal and there must be a risk of death – *Bateman, Stone and Dobinson, Adomako, Misra*

Define reckless manslaughter:

- Requirement of subjective recklessness – *Lidar*

Use any other relevant cases.

**Assessment Objective 2****(20)**

Discuss any or all of the following areas:

- Involuntary manslaughter is unwieldy as it covers too wide a range of situations
- In unlawful act manslaughter death may have been unexpected but if it occurs liability increases significantly and the objective test creates liability even if the defendant did not foresee a risk of injury
- Law Commission recommended abolition in 1996 but then in *Murder, Manslaughter and Infanticide 2006* proposed new offence of criminal manslaughter – will this resolve problems?
- Problem of circular test and inconsistent jury verdicts in gross negligence manslaughter
- Problems of using a word more at home in the civil law to define serious liability
- Law Commission 1996 proposal to have killing by gross carelessness but not enacted and then 2006 proposal to retain, with slight modification, present law on gross negligence manslaughter – would this work?
- Law Commission 2006 proposal to abolish reckless manslaughter and to rely on second degree murder and gross negligence manslaughter – is this any better?
- Does lack of action serve the criminal law well, does it adequately protect victims and punish defendants, will creation of second degree murder be helpful and if so how?

Reach any sensible conclusion.

Candidates are unlikely to achieve the descriptor for level 5 AO2 without a discussion that focuses on both manslaughter and its problems. Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion also identifies the role of the judges, the role of Parliament, the Law Commission, potential avenues for reform or the influence of policy in decision-making.

**Assessment Objective 3****(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 3\* Discuss the view that the defence of intoxication strikes a fair balance between legal principle and public policy. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	–
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers **MAY**:

### Assessment Objective 1

(25)

Define the defence of intoxication as meaning a failure to form mens rea due to alcohol, drugs or other substances

Explain that the defence is found in common law and distinguishes between voluntary and involuntary intoxication

Explain that in voluntary intoxication there is a difference between crimes of specific and basic intent

Explain voluntary intoxication:

- Can negate the mens rea needed for a specific intent offence – *Beard, Sheehan and Moore, Lipman*
- With the exception of theft voluntary intoxication is, at best, only a partial defence
- Has no relevance to a specific intent offence if intoxication is due to ‘Dutch courage’ – *Gallagher*
- Provides no defence to crimes of basic intent – *Majewski*

Explain involuntary intoxication:

- If pleaded successfully provides a complete defence
- Provides a defence when prescribed medication is taken as directed and has an unpredictable effect – *Hardie*
- Provides a defence where the defendant does not know they are taking an intoxicating substance, as in laced drinks, but there is no defence if the defendant has some awareness of intoxication – *Allen, Kingston*

Explain the link between intoxication and mistake:

- If a mistake is induced by intoxication there is rarely a defence, whether the crime is one of specific or basic intent – *Lipman, O’Grady, Hatton, Forthringham, section 76 Criminal Justice and Immigration Act 2008*
- Exception provided by section 5 Criminal Damage Act 1971 – *Jaggard v Dickinson*.

**Assessment Objective 2****(20)**

Discuss any or all of the following areas:

- Public policy issue as intoxication is at the root of a large amount of criminal conduct but need to balance personal responsibility and society's role to protect those who are vulnerable and can be victims of crime
- Argument that often there is no mens rea for the offence at the time it is committed as intoxication has already taken place and relatively few people set out to commit crimes when becoming intoxicated, or even see a risk that they will do so and decide to run it, so should intoxication always be a defence since the defendant has no mens rea?
- Problems of fall back offences and the situation in relation to theft and the arbitrary nature of distinctions between specific and basic intent
- Should a defendant be liable when they exercised no choice about becoming intoxicated?
- Butler Committee 1975 proposed offence of 'dangerous intoxication' – why was this rejected?
- Law Commission 1993 proposed a defence of voluntary intoxication to all crimes and in 1995 recommended codifying existing law; this was repeated in Offences Against the Person Bill 1998 but not enacted – is this a problem?
- Financial arguments – cost to NHS and anti social behaviour resulting from people using alcohol balanced against tax revenue
- Problems of creating an effective law for those who are intoxicated due to drugs, especially for driving.

Reach any sensible conclusion.

Candidates are unlikely to achieve the descriptor for level 5 AO2 without a discussion that focuses on both intoxication and its problems. Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion also identifies the role of the judges, the role of Parliament, the Law Commission, potential avenues for reform or the influence of policy in decision-making.

**Assessment Objective 3****(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

## SECTION B

- 4\* Flora belongs to SaveMe, an organisation which opposes animal testing. Flora is told by someone in the SaveMe organisation that something bad will happen to her if she does not stop Wonderface using animals to test their cosmetics. Flora breaks into Wonderface with a cricket bat intending to smash up the office of Brian, the Director of Wonderface, believing that he has gone home. Brian is working late. Flora sees Brian and hits him ten times with the cricket bat. Brian dies of a fractured skull.

Discuss the potential criminal liability of Flora, including any relevant defences. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	
Level 4	16-20	13-16	5
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Potential answers **MAY**:

**Assessment Objective 1**

**(25)**

Define and explain burglary:

- Section 9(1)(a) – entry of a building or part of a building as a trespasser with the intention to steal, inflict GBH or cause unlawful damage
- Section 9(1)(b) – having entered a building or part of a building as a trespasser the defendant attempts or commits theft or the infliction of GBH

Define and explain murder – unlawful killing of a human being with an intention to kill/inflict GBH or foresight of death/GBH as a virtually certain risk along with an appreciation of the risk and no intention to rescue – *Woollin*

Define and explain causation:

- Causation in fact – ‘but for’ test – *Roberts*
- Causation in law – operative and substantial test – *Cheshire*
- Take your victim as you find them – thin skull test – *Blaue*

Define and explain the defence of duress:

- A complete defence when victim acts under threats – *Graham, Hasan*
- Threat needs to be of death or serious bodily harm – *Valderrama-Vega*
- Threat needs to be immediate or reasonably imminent – *Hudson and Taylor*
- Offence needs to be identified - *Cole*
- Limits of defence if defendant voluntarily becomes involved in criminal enterprise – *Sharp, Shepherd, Hasan*
- Limit of defence in that not available to charge of murder or attempted murder – *Howe, Wilson, Gotts*
- Credit reference to an attempted offence relating to unlawful damage

**Assessment Objective 2****(20)**

Identify the offence of burglary

Identify the offence of murder

Identify the defence of duress

In the case of Flora breaking into Brian's office:

- Section 9(1)(a) – Flora enters Brian's office as a trespasser with the intention to cause unlawful damage and this would be sufficient for burglary
- Defence of duress unlikely to work as there is no clarity or immediacy to the threat

In the case of Flora hitting Brian and his death:

- Possibility of murder as there is an actus reus of unlawful killing of a human being and the chain of causation is intact
- Evidence of intention as Flora hits Brian ten times suggesting an intention to do GBH at least
- Duress will not work if the charge is murder and unlikely to work as there is no threat of death or serious bodily harm.

Candidates are unlikely to achieve the descriptor for level 5 AO1 and AO2 without identification, discussion and application of all the areas of law raised by the question.

**Assessment Objective 3****(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 5\* Shane is out of work. He needs money to buy his 11 year-old daughter, Tabitha, a birthday present and decides to rob his local shop. Shane enters the shop wearing a scary mask and pointing a gun. The gun is not real but it frightens Derek, the shopkeeper, so much that he hands over £100 to Shane. Without Shane knowing, Tabitha has followed her father and when she sees him pointing the gun at Derek she slips into the shop intending to steal a DVD. Inside the shop Tabitha grabs a can of baked beans and hurls the can at the shop window, breaking it, before running away. Shane goes to the newsagent and buys £100 of lottery tickets.

Discuss the criminal liability of Shane and Tabitha. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	–
Level 4	16-20	13-16	5
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Potential answers **MAY**:

**Assessment Objective 1** (25)

Define robbery – charged under section 8 Theft Act 1968

- Actus reus requires theft accompanied by use or threat of force before or at the time of stealing and in order to steal – *Dawson and James, Hale, Lockley*
- Mens rea is an intention to steal and intention or recklessness as to force – *Robinson*
- Offence committed at the time the theft is complete – *Corcoran and Anderton*

Define burglary – charged under section 9 Theft Act 1968:

- Section 9(1)(a) – entry of a building or part of a building as a trespasser with the intention to steal, inflict GBH or do unlawful damage
- Section 9(1)(b) – entry of a building or part of a building as a trespasser and going on to commit or attempt theft or infliction of GBH – *Walkington*

Define theft – charged under section 1 Theft Act 1968

Explain that section 2 – 6 define the elements of the offence and all need to be proved to get a conviction

Explain the actus reus of theft:

- Section 3 – appropriation – any interference with any of the rights of the owner and this can occur with or without consent – *McPherson, Lawrence, Morris, Gomez*
- Section 4 – property – *Oxford v Moss, Kelly*
- Section 5 – belonging to another – this can take the form of ownership, possession or control – *Turner*

Explain the mens rea of theft:

- Section 2 – dishonesty – there is no statutory definition in the Theft Act, rather there is a partial and negative definition of what is not dishonest
- Section 2(1)(a) – the defendant is not dishonest if they honestly believe they have a legal right to the property
- Section 2(1)(b) – the defendant is not dishonest if they honestly believe the owner would consent - *Holden*
- Section 2(1)(c) – the defendant is not dishonest if they honestly believe the owner cannot be found having taken reasonable steps to do so – *Small*
- If none of the statutory exceptions apply the jury apply a common sense view

- If guidance is still needed the jury must decide if the defendant was dishonest by the standards of the reasonable man and, if so, the defendant knew they were dishonest by that standard – *Ghosh*
- Section 6 – intention to permanently deprive – this means an intention to take for ever or to take for a period which is equivalent to an outright taking, even though the defendant always intended to return the property – *Lloyd*

Credit reference to assault

### Assessment Objective 2

(20)

Identify robbery.

Identify burglary.

Identify theft.

In the case of Shane entering the shop:

- There is a completed appropriation in that Derek hands over £100 to Shane as consent is no barrier and all the other elements of theft appear to be complete
- There is a threat of force in Shane pointing what Derek believes to be a loaded gun and causing him to be fearful
- It precedes the theft and is in order to make Derek hand the money over
- Shane has robbery as his aim and so there is the necessary mens rea for the offence of robbery.

In the case of Shane entering the building and stealing £100:

- Shane enters a building or part of a building as a trespasser as Derek would not allow him to enter if he knew he intended to steal
- Shane has the mens rea to steal when he enters and so a charge for section 9(1)(a) seems likely.

In the case of Tabitha entering the shop:

- Tabitha enters a building or part of a building as a trespasser as Derek would not allow her to enter if he knew she intended to steal
- Tabitha has the mens rea to steal when she enters and so a charge for section 9(1)(a) seems likely.

In the case of Tabitha picking up the can of beans and breaking the shop window:

- Tabitha has entered the building as a trespasser
- By picking up the can of baked beans this could be construed as theft as she satisfies the elements of the offence and so could also be section 9(1)(b) burglary
- Breaking the shop window constitutes unlawful damage and this is outside the range of offences in section 9(1)(b).

Candidates are unlikely to achieve the descriptor for level 5 AO1 and AO2 without identification, discussion and application of all the areas of law raised by the question.

### Assessment Objective 3

(5)

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- 6\* Junaid and Oleg are first and second in a queue outside Electrostore to buy a television in the sale. When the doors open Oleg pushes Junaid out of the way. Junaid loses his balance, he falls over and cuts his arm. Although he is bleeding, Junaid chases Oleg shouting "I'll get you - that television is mine!" Junaid catches Oleg and they start to fight. Oleg punches Junaid and breaks his nose. Junaid grabs Oleg and pushes him so hard that Oleg's ankle is broken when he falls into a display of televisions. The shop manager, Clive, runs over to help. Junaid thinks Clive is going to attack him and hits Clive in the stomach which causes bruising.

Discuss the criminal liability, if any, of Junaid and Oleg. Do not discuss the offence of burglary. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	–
Level 4	16-20	13-16	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

Potential answers **MAY**:

### Assessment Objective 1

(25)

Define and explain non fatal assaults against the person:

Explain common law assault and battery – charged under section 39 Criminal Justice Act 1988:

- Assault is putting a person in fear of immediate and unlawful personal harm accompanied by a mens rea of intention or subjective recklessness - *R v St George, Stephens v Myers, Cole v Turner, Venna*
- Battery is the infliction of unlawful personal harm accompanied by a mens rea of intention or subjective recklessness – *Collins v Wilcock, Thomas*.

Explain assault occasioning actual bodily harm – section 47 Offences Against the Person Act 1861:

- Actus reus is assault leading to harm which interferes with health or comfort – *Miller*
- Mens rea of intention or subjective recklessness is only needed for the assault or battery – *Roberts, Savage*.

Explain unlawful and malicious wounding or inflicting grievous bodily harm – section 20 Offences Against the Person Act 1861:

- Actus reus is infliction of a wound which breaks all layers of skin or really serious harm – *Smith*
- Mens rea is foresight of some harm but not necessarily serious harm – *Grimshaw, Parmenter*.

Explain unlawful and malicious wounding or causing grievous bodily harm with intent – section 18 Offences Against the Person Act 1861:

- Actus reus is causing harm as for section 20
- Mens rea is intention to do serious harm - *Morrison*
- Credit reference to relevant CPS Charging Standards.

Define and explain the defence of consent in the context of a fight:

- Consent can be a complete defence if it is free and genuine in a situation permitted by the courts
- There can be consent to a fight but only within the rules of a properly conducted sport – *AG Ref (No 6 of 1980)*.

Define and explain the defence of self-defence:

- Complete defence based on the use of reasonable force in circumstances where there is an honest belief in an imminent attack – *Williams (Gladstone)*

- If there is a mistake as to the need for force the mistake need only be honest.

**Assessment Objective 2****(20)**

Identify common law assault and battery

Identify section 47 OAPA 1861

Identify section 20 OAPA 1861

Identify section 18 OAPA 1861

Identify the defence of consent

Identify the defence of private/self-defence

In the case of Junaid cutting his arm:

- Harm is caused as a result of a battery - there is hostile touching which is possibly intentional, and certainly subjectively reckless, when Oleg pushes Junaid
- Because of the bleeding this could be enough to satisfy s18 or s20
- Oleg was malicious but it is doubtful that he intended serious harm and so a charge of s20 seems the most appropriate.

In the case of Junaid shouting at Oleg:

- There is the actus reus of assault as there is the putting in fear of immediate and unlawful personal violence by the use of words in the context of the scenario
- It would appear that Junaid has the mens rea of intention or at least subjective recklessness.

In the case of Oleg breaking Junaid's nose:

- The actus reus would appear to be that of s47 as a broken nose may constitute actual bodily harm as it interferes with health or comfort
- There is at least subjective recklessness for the battery but not necessarily for any harm
- Oleg may want to run the defence of consent but a fight is not lawful unless it is conducted within the rules of the sport and so Oleg and Junaid cannot consent to fight over the TV.

In the case of Oleg's broken ankle:

- A broken bone would constitute GBH and thus a charge of s18 or s20 seems likely
- The fact that Junaid shoves Oleg very hard could be enough for s18
- Alternatively, he might be convicted of s20 on the basis of subjective recklessness because he is likely to have seen the risk of some harm from his action, if not the serious harm which results.

In the case of the bruising to Clive:

- Bruising is usually seen as minor harm and common law battery would seem to be the most likely charge although s 47 could be a viable alternative
- Junaid appears to have intention for the offence as he thinks Clive is going to attack him
- Junaid will run self-defence on the basis that he honestly believed he was about to be attacked – this may be successful and so he would have a complete defence to this charge.

Candidates are unlikely to achieve the descriptor for level 5 AO1 and AO2 without identification, discussion and application of all the areas of law raised by the question.

**Assessment Objective 3****(5)**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

## SECTION C

- 7 Rashid suffers from diabetes. He has previously had blackouts due to hyperglycaemia and has to take insulin twice a day. He fails to take his insulin for a whole day and during the evening, while driving, he suffers from a blackout. Rashid loses control of the car which mounts a pavement and hits Larissa, a pedestrian. Larissa dies immediately.

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

**Statement A:** Rashid will not be convicted of unlawful act manslaughter because he has not caused the death of Larissa.

**Statement B:** Rashid will gain an acquittal by using the defence of automatism.

**Statement C:** Rashid will be found not guilty by reason of insanity.

**Statement D:** Rashid must be hospitalised in a secure institution for the mentally ill if found 'not guilty by reason of insanity.'

[20]

Mark Levels	AO2
Level 5	17-20
Level 4	13-16
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

**Assessment Objective 2**

(20)

**Statement A:** Rashid will not be convicted of unlawful act manslaughter because he has not caused the death of Larissa.

**P1** Reason that unlawful act manslaughter requires an unlawful and objectively dangerous act – this applies to Rashid's driving

**P2** Reason that there must be causation in fact and Larissa would not have died 'but for' Rashid's driving

**P3** Reason that there must be causation in law and Rashid was the operative and substantial cause of harm

**P4** Reason that nothing breaks the chain of causation

**P5** Conclude that the statement is inaccurate.

**Statement B:** Rashid will gain an acquittal by using the defence of automatism.

**P1** Reason that automatism is where there is an involuntary act on the part of the defendant

**P2** Reason that the cause of the automatism must be an external factor

**P3** Reason that by not taking his insulin the cause of Rashid's blackout is an internal factor

**P4** Reason that in any event Rashid's automatism is self-induced as he is reckless in not taking his insulin

**P5** Conclude that the statement is inaccurate.

**Statement C: Rashid will be found not guilty by reason of insanity.**

**P1** Reason that a verdict of not guilty by reason of insanity comes from use of the special verdict or showing that Rashid suffered from a defect of reason caused by a disease of the mind so as not to know the nature and quality of his act or that it is legally wrong

**P2** Reason that the defect of reason is Rashid's inability to control his car

**P3** Reason that the death of Larissa is caused by the effect of the diabetes itself, making it an internal factor and thus a disease of the mind

**P4** Reason that due to his blackout Rashid does not know the nature and quality of his act

**P5** Conclude that the statement is accurate.

**Statement D: Rashid must be hospitalised in a secure institution for the mentally ill if found 'not guilty by reason of insanity.'**

**P1** Reason that the outcome following a successful use of insanity has been expanded and hospitalisation is no longer compulsory for most crimes

**P2** Reason that hospitalisation must be used if the offence is murder

**P3** Reason that Rashid would not appear to possess the high level of mens rea necessary for murder

**P4** Reason that this means Rashid could receive one of a range of options, eg a supervision order

**P5** Conclude that the statement is likely to be inaccurate.

- 8 Candice, aged 21, has an eating disorder, low self esteem and has tried to kill herself twice. Her boyfriend Jeff, aged 40, knows this and makes her have sex with his friends. Jeff tells Candice to have sex with Derek, aged 65. Candice refuses and grabs a knife. She slashes at her arm and lunges at Jeff. Jeff laughs and tells Candice she is pathetic. Candice stabs Jeff in the stomach and Jeff dies three hours later.

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

**Statement A:** Candice will be convicted of attempted murder when she lunges at Jeff.

**Statement B:** Candice cannot successfully plead provocation because she has not been provoked.

**Statement C:** Candice cannot successfully plead provocation as Jeff does not die immediately.

**Statement D:** Candice can successfully plead diminished responsibility as she has an abnormality of mind. [20]

Mark Levels	AO2
Level 5	17-20
Level 4	13-16
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

**Assessment Objective 2** (20)

**Statement A:** Candice will be convicted of attempted murder when she lunges at Jeff.

**P1** Reason that the actus reus of attempted murder is doing an act which is more than merely preparatory

**P2** Reason that Candice does an act which is more than merely preparatory when she lunges at Jeff

**P3** Reason that the mens rea is intention to kill

**P4** Reason that Candice seems to have an intention to kill because she lunges at Jeff with a knife

**P5** Conclude that the statement is accurate.

**OR**

**P4a** Reason that Candice may only have an intention to do GBH

**P5a** Conclude that the statement is inaccurate.

**Statement B:** Candice cannot successfully plead provocation because she has not been provoked.

**P1** Reason that provocation can come from things said or done or both together

**P2** Reason that making her have sex with Derek is provocative conduct

**P3** Reason that calling Candice pathetic and laughing at her could be things said or done

**P4** Reason that these events could constitute cumulative provocation

**P5** Conclude that the statement is inaccurate.

**Statement C: Candice cannot successfully plead provocation as Jeff does not die immediately.**

**P1** Reason that Candice has caused Jeff's death

**P2** Reason that the fact it takes Jeff three hours to die is not relevant

**P3** Reason that the time elapsing is only relevant to Candice's response

**P4** Reason that Candice can still plead provocation

**P5** Conclude that the statement is inaccurate.

**Statement D: Candice can successfully plead diminished responsibility as she has an abnormality of mind.**

**P1** Reason that an abnormality of mind is a state of mind the reasonable man would find abnormal

**P2** Reason that an abnormality of mind must be caused by an inherent factor, disease or injury

**P3** Reason that Candice's fragile emotional state and her attempted suicides would be enough to fit the criteria of an abnormality of mind

**P4** Reason that this means Candice can plead diminished responsibility

**P5** Conclude that the statement is accurate.

**Possible annotations for use in marking this unit**

R	repetition
}	irrelevant (use for more than a couple of lines of text otherwise use the following)
S/O	sort of
✓	knowledge (AO1)
def	definition (AO1)
C1 etc	to indicate cases (AO1)
n/o	to indicate use of a case but in name only
^	omission
AO2	to indicate a bold comment
AO2+	to indicate developed comment / discussion
AO2++	to indicate extremely well developed comment / discussion

## 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 <b>or</b> identify all of the relevant points of law in issue. A high level of ability to develop arguments <b>or</b> 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 <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> 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 <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> 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 <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> 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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