

Mark Scheme for June 2010

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Mark schemes should be read in conjunction with the published question papers and the Report on the Examination.

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This mark scheme must be used in conjunction with the Advanced GCE Law Assessment Grid.

When using the mark scheme the points made are merely those that a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant.

Candidates can score in the top bands without citing all the points suggested in the scheme. Answers which contain no relevant material at all will receive no marks.

Section A

- 1* 'The Criminal Attempts Act 1981 was intended to improve the law on attempts. The extent to which it has succeeded is open to doubt.'

Critically evaluate the accuracy of this statement.

[50]

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

Mark Levels	AO3
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers **MAY**:

Assessment Objective 1

(25)

Define the **Criminal Attempts Act 1981** as a piece of codifying legislation in terms of key definitions of actus reus and mens rea;

Explain, in outline, the workings of the last act/Rubicon test, the test of sufficient proximity and the series of acts test – *Eagleton, Stonehouse, Robinson, Boyle and Boyle*;

Explain attempt:

- Actus reus of an attempt found in **section 1 (1) CAA 1981** – doing an act which is more than merely preparatory – *Gullefer, Jones, Campbell, Geddes, Tosti and White*;
- Mens rea of an attempt – *Widdowson, Whybrow, Mohan, Walker and Hayles*;
- Particular relevance of recklessness in relation to circumstances – *AG Ref. (No. 3 of 1992)(1994)*;
- Conditional intent – *Easom, Husseyn, AG Ref. (No. 1 and 2 of 1979)(1979)*;
- Position relating to impossibility addressed in **sections 1 (2) and section 1 (3) CAA 1981** – *Anderton v Ryan, Shivpuri, Taaffe, Jones (2007)*;
- Proposals for reform by the Law Commission;
- Sentencing provisions can be as for the full offence.

Assessment Objective 2**(20)**

Discuss any or all of the following areas:

- Problems caused by having several tests at common law;
- The rationale behind a law of attempt as a need to stop criminal behaviour before harm is caused;
- The need to give the police the opportunity to stop criminals before an offence is committed;
- The need to balance this against intervention which is too early and could run the risk of punishing people for mere contemplation or minimal activity in pursuit of a crime;
- The desire of Parliament to make this an offence decided by a jury using their common sense and the courts clear intention to give effect to this;
- Practical difficulties in implementing the test and the inconsistent decisions which have been reached as a consequence;
- Particular problems relating to impossibility and the line between a thought crime and an attempt;
- Issues in relation to levels of mens rea, particularly evident in attempted murder;
- Proposals for reform – would other models, such as the US, work better?
- Problems caused by sentencing inconsistencies;
- Question whether the present law provides a suitable deterrent.

Credit reference to recent change in position by the Law Commission.

Assessment Objective 3**(5)**

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

- 2* Discuss the view that the courts have clarified the *mens rea* of murder so that further legislation by Parliament is unnecessary. [50]

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

Mark Levels	AO3
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers **MAY**:

Assessment Objective 1 (25)

Define and explain the *mens reas* of murder:

- Often referred to as malice aforethought;
- Most serious level of mens rea and required for relatively few offences but is indicative of a high level of blameworthiness;
- Distinguishable from motive – *Steane, Chandler*;
- Direct intent – death/GBH is the defendant’s purpose and they set out to bring it about – *Mohan*;
- Oblique intent – death/GBH is not the defendant’s clear aim but occurs as a result of their actions and is linked to their capacity to foresee the consequences of their actions – and that this is the concept which has troubled the courts;
- **Section 8 Criminal Justice Act 1967** created a subjective test which also made it clear foresight of consequences was only part of the evidence from which intention could be inferred;
- Development of oblique intent by the courts – *Hyam, Moloney, Hancock and Shankland, Nedrick, Woollin, Matthews and Alleyne*;
- Proposals for change from the Law Commission – *A New Homicide Act for England and Wales* (2005), *Murder, Manslaughter and Infanticide* (2006);
- Use any other relevant cases.

Assessment Objective 2**(20)**

Discuss any or all of the following areas:

- Intention as a level of mens rea is crucial to differentiate murder from manslaughter;
- Practical difficulties facing juries in the application of the tests;
- Problems of proving what was in a defendant's mind;
- Problems relating to probability and its meaning;
- Difficulties for juries in that a conviction for murder leads to a mandatory life sentence and significant stigma for the defendant which juries may be reticent to deliver by finding that intention exists;
- Intention is often decided as a matter of common sense – is this a suitable test for such a serious situation?
- Problems arising from the fact that juries' thoughts may be coloured by the facts of the case – eg offences involving sexual violence, offences against children, involving torture etc;
- Would changing the structure of homicide offences affect the way decisions are made?
- Consideration of reform proposals and the experiences of other countries eg USA.

Assessment Objective 3**(5)**

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

3* 'The defence of duress is essential but, in its present form, unsatisfactory.'

Critically evaluate the accuracy of this statement.

[50]

Mark Levels	AO1	AO2
Level 5	21-25	17-20
Level 4	16-20	13-16
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Potential answers **MAY**:**Assessment Objective 1****(25)**

Define the defence of duress:

- Pressure and that, if successful, the effect is acquittal;
- Found in common law;
- Standard test governs the application of the defence – *Graham, Hasan*.

Explain the elements of the defence:

- Must be a threat of death or serious bodily harm to the defendant or someone close to them – *Valderrama-Vega, Wright*;
- Any self-induced characteristics must be excluded and other characteristics may be excluded – *Bowen, Flatt*;
- The threat could be reasonably imminent – *Hudson and Taylor, Abdul-Hussein, Safi* – but this is arguably overruled by *Hasan* which uses the phrase 'immediate or almost immediate';
- The defendant must be judged by the threat as they perceived it to be – *Safi*;
- There must be nexus between what is threatened and what the defendant does – *Cole*;
- Lack of defence if the charge is murder or attempted murder – *Lynch, Howe, Gotts*;
- Lack of defence if the defendant is voluntarily involved in criminality – *Fitzpatrick, Sharp, Shepherd, Hasan*.

Explain that problems with the defence of necessity and the limits of duress led to the development of the defence of duress of circumstances – *Dudley and Stephens, Buckoke, Willer, Conway, Martin, Pommell*;

Explain that some progress has been made in the defence of necessity – *Re A, Shayler*;
Candidates will be unable to achieve level 5 without explanation of more than one type of duress.

Assessment Objective 2**(20)**

Discuss any or all of the following areas:

- The desire to take account of the fact that defendants act very differently under extreme pressure;
- The need for humanity in the law if it is to be seen as just and effective;
- Problems of proof – how can juries put themselves in the place of the defendant when trying to decide on the defence?
- Does the fact that the defence is complete actually make it harder to raise successfully?
- Inconsistencies with other defences – especially provocation which offers a partial defence to murder whereas duress is not available;
- Issues relating to the type of threat and to whom it is made – how easy it is to draw such lines if the pressure is overbearing to the individual concerned?
- Is the defence driven by policy particularly with regard to murder and association with known criminals and terrorists?
- Inconsistency in that the defence is not available to murder and yet it is available if the charge is section 18 OAPA 1861.

Discuss proposals for change and any impact they may have if enacted;

Candidates will be unable to achieve level 5 without critically evaluating more than one type of duress.

Assessment Objective 3**(5)**

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

Section B

- 4* Alan is in a pub when he has a violent sneezing fit. The glass he is holding flies out of his hand and hits Bradley, the barman, gashing his cheek. Bradley is an epileptic who has forgotten to take his medication. Bradley has an epileptic seizure and lashes out at a customer, Carol, kicking her before collapsing on the floor. Carol has drunk several glasses of orange juice which, unknown to her, have been spiked with vodka and she kicks Bradley whilst he is on the floor, severely damaging his kidney. Carol then lurches towards Alan with a broken bottle in her hand. Alan thinks she is about to attack him and he punches Carol so hard that he knocks her out.

Alan is charged under sections 47 and 20 Offences Against the Person Act 1861, Bradley is charged under section 39 Criminal Justice Act 1988 and Carol is charged under section 18 Offences Against the Person Act 1861 and section 39 Criminal Justice Act 1988.

Discuss the defences which may be available to Alan, Bradley and Carol for these specific offences. [50]

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Potential answers **MAY**:

Assessment Objective 1**(25)**

Define and explain the defence of automatism:

- Need for an involuntary act over which the body has no control – *Bratty*;
- Must be something such as a spasm or convulsion – *Hill v Baxter*, *Whoolley*;
- Act must be induced by an external factor – *Quick and Paddison*;
- Defendant must be incapable of forming mens rea;
- Successfully raising automatism leads to acquittal as it is a complete defence.

Define and explain the defence of insanity using the M'Naghten Rules 1843:

- Must be a defect of reason meaning the defendant cannot reason at all rather than just reasoning imperfectly – *Clarke*;
- Must be caused by a disease of the mind which is induced by an internal factor – *Bratty*, *Quick and Paddison*, *Sullivan*, *Hennessy*;
- Must mean the defendant does not know the nature and quality of their act or that it is legally wrong – *Codere*, *Windle*;
- Successfully raising the defence can lead to a range of conclusions up to and including committal to a mental hospital.

Define and explain the defence of involuntary intoxication:

- Intoxication must be of a level which means the defendant does not form mens rea – *Hardie*;
- To be involuntary the defendant must have no awareness of being intoxicated – *Allen*, *Kingston*;
- However, a drunken intent is still an intent – *Sheehan*, *Kingston*;
- Successfully raising involuntary intoxication leads to acquittal as it is a complete defence.

Define and explain the defence of self-defence:

- Use of some force must be necessary in the circumstances as they appear to the defendant;
- Force used must be reasonable – *Palmer*, *Owino*, *White*;
- Evidence of an attempt to retreat or to 'disengage and temporise' is desirable but not essential – *Bird*;
- Use of excessive force may render the defence unavailable – *Clegg*;
- Mistake as to the need for force in self-defence must be assessed subjectively – *Williams (Gladstone)*;
- Intoxication may affect the availability of the defence – *O'Grady*;
- Successfully raising self-defence leads to acquittal as it is a complete defence;
- Credit reference to the **Criminal Justice and Immigration Act 2008**.

Candidates will be unable to achieve level 5 without making reference to each of the defences.

Assessment Objective 2**(20)**

Identify the defence of automatism
Identify the defence of insanity
Identify the defence of involuntary intoxication
Identify the defence of self-defence

In the case of Alan gashing Bradley's cheek:

- The fact that Alan has a violent sneezing fit would suggest it is an involuntary act;
- It would appear that he sneezed more than once making it more likely to be involuntary;
- Unless Alan has been reckless by going somewhere he knows is likely to exacerbate a sneezing allergy or not taken prescribed medication, the sneezing fit is likely to be an external factor over which he has no control;
- It seems likely that automatism will be a complete defence.

In the case of Bradley lashing out and kicking Carol:

- Having an epileptic seizure almost certainly deprives Bradley of the ability to reason;
- As this state is induced by Bradley not taking his medication it is an internal factor;
- The seizure renders Bradley unable to appreciate the nature and quality of his act or that it is legally wrong;
- Bradley is likely to succeed with a defence of insanity.

In the case of Carol kicking Bradley;

- The relevant defence is intoxication and as long as Carol has no idea she is intoxicated it will be involuntary;
- The fact that she has been drinking orange juice makes it more likely she would not know she could be intoxicated;
- Carol must fail to form the mens rea for the offence and the force with which she kicks Bradley suggests she may have some awareness of her actions;
- It seems debatable whether involuntary intoxication will be a defence.

In the case of Carol lurching towards Alan waving a broken bottle:

- Carol may put Alan in fear of immediate and unlawful personal harm which is the actus reus of assault;
- The mens rea is intention or subjective recklessness;
- If Carol acts due to her involuntary intoxication she will have a complete defence.

In the case of Alan punching Carol because he fears she is about to attack him:

- Carol coming towards Alan waving a bottle seems likely to make him think she is about to attack him;
- Alan could try and diffuse the situation but this is not essential and it appears there is no time to do this;
- Knocking Carol out could be a disproportionate level of force given that Carol had not touched Alan;
- If Alan honestly believes he is about to be attacked that should suffice;
- Although a drunken mistake about the need for self-defence can invalidate the defence there is nothing to suggest Alan is intoxicated.

It seems likely that self-defence will be a complete defence.

Candidates will be unable to achieve level 5 without making reference to each of the defences.

Assessment Objective 3**(5)**

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

- 5* Yuri and Andrew are flat-sharing students. Whilst shopping Yuri takes some sunglasses from a display and slips them into his pocket. He sees a shirt priced £50, swaps the price-tag for one marked £30 and pays the lower price. Andrew gives Yuri £50 for the gas bill. Yuri uses it to buy lottery tickets but wins nothing. Yuri buys a DVD and pays for it with a £10 note. The assistant mistakenly gives him change for a £20 note. Yuri realises this once he is outside the shop but keeps the money.

Andrew takes Yuri's football club season ticket from his room and returns the ticket three months later when only one match remains. Andrew sees an exam paper on his professor's desk. He makes a photocopy and leaves the original on the desk.

Discuss the criminal liability for theft of Yuri and Andrew.

[50]

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Level 5	21-25	17-20
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Mark Levels	AO3
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers **MAY**:

Assessment Objective 1

(25)

Define and explain theft – charged under **section 1 Theft Act 1968**; sections 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 assumption of any of the rights of the owner and this can occur with or without consent – *McPherson, Lawrence, Morris, Gomez*;
- Section 4 – property – this can be tangible or intangible but information is not property for the purposes of theft – *Oxford v Moss, Kelly*;
- Section 5 – belonging to another – this can take the form of ownership, possession or control – *Turner*;
- Section 5 (3) – property given for a specific purpose must be used in a particular way – *Hall, Davidge v Bunnett*;
- Section 5 (4) – property received by mistake can be stolen if there is a legal obligation to return it – *AG Ref (No. 1 of 1983) (1984)*.

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 forever or to take for a period which is equivalent to an outright taking, even though the defendant always intended to return the property – *Lloyd*.

Assessment Objective 2**(20)**

In the case of Yuri slipping the sunglasses into his pocket:

- Clear evidence of an appropriation and the sunglasses are property belonging to the shop;
- By hiding the sunglasses Yuri does not fit any of the statutory exceptions in section 2 and a jury is likely to see his conduct as dishonest;
- Yuri appears to have an intention to permanently deprive and so it seems likely that this will constitute theft.

In the case of Yuri label swapping so as to pay a lower price for the shirt::

- Evidence of an appropriation when the labels are swapped;
- Since this is done dishonestly the theft is complete at that time;
- The owner of the shop would not consent to Yuri behaving in that way;
- In practice the theft is clear when Yuri actually pays £30 for a shirt originally priced at £50 as that is evidence of his dishonesty and his intention to permanently deprive so seems likely that this will constitute theft.

In the case of Yuri spending £50 on the lottery:

- The £50 used has been given for a specific purpose;
- According to section 5 (3) this is theft if accompanied by the other elements;
- These would appear to be present although perhaps Yuri could argue he was not dishonest as Andrew would not mind how the £50 was used as long as the bill was paid but technically Yuri's actions will constitute theft.

In the case of the excess change:

- According to section 5 (4) money acquired by an innocent mistake can become theft if there is a legal obligation to return the money which is not fulfilled;
- Yuri does not realise he has too much change until he is outside the shop;
- At that point it is both practical and possible for him to return it;
- Therefore Yuri becomes dishonest and his actions constitute theft.

In the case of Andrew using Yuri's season ticket:

- According to section 6 an intention to permanently deprive means an intention to take property for ever or an intention to take it and use it for such a period of time which is equivalent to an outright taking even if the defendant returns the property and indeed always intended to return it but credit the argument that an intention to permanently deprive is when all the goodness and virtue has been used up is also sufficient;
- Andrew's taking of the ticket, if his intention was to return it when nearly all the value has been extinguished means his actions are likely to constitute theft.

In the case of Andrew copying the exam paper:

- According to section 4, information cannot be stolen as it is not property for the purposes of theft;
- However, the paper used to make the photocopy can be stolen and electricity is abstracted to make the photocopy;
- Even though the original exam paper is not taken the sheet of paper on which the exam is written and the paper onto which it is copied can be stolen and so Andrew's actions constitute theft.

Assessment Objective 3**(5)**

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

- 6* Sue, aged 3, is at the beach with her mother, Fiona. Sue cannot swim but she paddles whilst Fiona sunbathes. Sue paddles until she is out of her depth but Fiona does not notice. Ted, the lifeguard at the beach, is busy showing his rescue kit to his new girlfriend and pays no attention to Sue. Another holidaymaker, David, sees what has happened but decides to do nothing. Sue is washed back to shore and Fiona finds her gasping for breath and with a cut head. Fiona takes Sue to hospital where she is seen by Doctor Cox. He tells Fiona that Sue is not badly hurt and Sue is left on a trolley in a corridor for three hours. When Doctor Cox returns Sue has died from her head injury.

Discuss the criminal liability, if any, of Fiona, Ted, David and Doctor Cox for the manslaughter of Sue.

[50]

Mark Levels	AO1	AO2
Level 5	21-25	17-20
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Mark Levels	AO3
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers **MAY**:

Assessment Objective 1**(25)**

Define involuntary manslaughter as being of three types:

- Unlawful act/constructive manslaughter;
- Gross negligence manslaughter;
- Subjective reckless manslaughter.

Explain gross negligence manslaughter – *Adomako*:

- There needs to be a duty to care;
- The duty to care must be breached;
- There must be a risk of death and death occurs;
- The negligence on the part of the defendant must be so gross in the eyes of the jury as to be criminal.

Explain the law relating to omissions – situations where a failure to act when there is a duty to do so constitutes the actus reus of the offence:

- Statutory duty – *Children and Young Persons Act 1933, Gibbins and Proctor*;
- Contractual duty – *Pittwood, Dytham, Adomako*;
- Common law duty based on family relationship – *Instan*;
- Common law duty based on reliance – *Stone and Dobinson*;
- Common law duty based on supervening fault – *Miller*.

Explain the law relating to causation:

- Causation in fact – the 'but for' test – *Roberts, White*;
- Causation in law – the operative and substantial cause of harm test – *Smith, Cheshire, Jordan*;
- The reasonable foresight test – *Pagett*;
- The 'thin skull' test – the defendant must 'take their victim as they find them' – *Blaue*.

Explain the Good Samaritan rule – a person who does not owe a duty to another human being cannot be prosecuted for a failure to act.

Assessment Objective 2**(20)**

Identify gross negligence manslaughter as being the most appropriate charge.
Identify the chain of causation;
Identify the doctrine relating to omissions.

In the case of Fiona:

- Failure to keep Sue under proper supervision, especially since she knows Sue cannot swim would seem to be an omission of the statutory duty on a parent to care for a child;
- However, Fiona does her best for Sue when she is washed back to the beach by taking her to hospital;
- It seems unlikely she will be liable for Sue's death although it is possible to conclude that Fiona is liable if her failure to supervise is seen as bad enough to be a breach of her duty as a parent.

In the case of Ted:

- His job as a lifeguard creates a contractual duty to look out for people in trouble on the beach;
- Ted should take all reasonable steps to help someone in trouble – the law requires him to be a 'man but not a superman';
- Being busy with his girlfriend and paying no attention to Sue is outside his contractual obligation;
- Ted's failure is such that he may be liable for gross negligence manslaughter as he has a duty to act which he breaches, there is a risk of death, Sue does die and a jury may see his failure as so grossly negligent as to be criminal.

In the case of David:

- As a holiday maker David appears to have no link to Sue;
- As such he does not owe a duty to act;
- This may be morally abhorrent but David can choose to do nothing and he will have no criminal liability.

In the case of Doctor Cox:

- Due to his job Doctor Cox has a contractual obligation to treat Sue;
- Thus he has a duty to care which is breached;
- This breach exposes Sue to a risk of death as Doctor Cox does not realise she is so badly hurt and death results;
- The chain of causation would appear to be intact as, but for Doctor Cox, Sue may well have survived and the failure to treat would appear to be the operative and substantial cause of death;
- However courts are unwilling to find doctors responsible if their failure is simply a 'mistake' unless it falls far below the professional standard reasonably expected;
- It seems likely that Doctor Cox may avoid liability if he is simply busy or makes a 'bad call' but it is also possible that a jury would see his failure as so grossly negligent as to be criminal.

Assessment Objective 3**(5)**

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

Section C

- 7 Tom and Carly are students in the same law class. Tom often teases Carly and tells her that she is stupid. Carly becomes clinically depressed. She decides to beat up Tom the next time he calls her stupid. Several days later Carly does badly in a test and Tom calls her stupid again. Carly waits until the end of the class, grabs Tom and smashes his head on a desk. Tom's skull is fractured and he dies.

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. [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: Carly can be charged with Tom's murder.

- Reason that the actus reus of murder is the unlawful killing of a human being;
- Reason that fracturing Tom's skull causing death satisfies the actus reus
- Reason that the mens rea for murder is malice aforethought - an intention to kill or cause GBH or to foresee death or GBH as a virtually certain consequence;
- Reason that Carly's decision to beat Tom up satisfies this mens rea
- Conclude that the statement is accurate.

Statement B: Carly will not succeed with a defence of provocation because calling her 'stupid' is not that bad.

- Reason that there must be evidence of provocation and this is found in Tom's repeated taunting of Carly;
- Reason that this is anything done or said;
- Reason that this is often an unlawful act but does not need to be so;
- Reason that cumulative taunting can be provocative;
- Conclude that the statement is inaccurate.

OR

- Credit alternative reasoning that Carly's reaction will be compared to that of the reasonable man who shares whichever of Carly's characteristics affect the gravity of provocation;
- Credit alternative reasoning that Carly's age, sex and depression may be relevant characteristics;
- Credit alternative conclusion that the statement may or may not be accurate.

Statement C: Carly will not succeed with a defence of provocation because she does not kill Tom immediately.

- Reason that to succeed with provocation there must be a sudden and temporary loss of control;
- Reason that this does not need to be immediate;
- Reason that the longer the time lapse the less likely it is that provocation will succeed;
- Reason that although Carly waits till the end of the class before attacking Tom this may still be enough to give her access to the defence if her loss of control is sudden;
- Conclude that provocation is successful and the statement is likely to be inaccurate.

OR

- Credit alternative reasoning that waiting until the end of the lesson could constitute a cooling-off period;
- Conclude that provocation is unsuccessful and the statement is likely to be accurate.

Statement D: Carly will not succeed with a defence of diminished responsibility.

- Reason that diminished responsibility requires an abnormality of mind and is seen in Carly's depression;
- Reason that there is a need for substantial impairment evidenced by her action of smashing Tom's head on the desk;
- Reason that there needs to be a specified internal cause and that depression fits this criteria;
- Reason that there will be a need for medical evidence (from at least two doctors);
- Conclude that the statement is likely to be inaccurate.

- 8 James and Brett decide to fight to settle an argument. Brett shoves James hard in the chest. James swings at Brett but misses him and hits Daniel, breaking Daniel's jaw. Brett then hits James, causing minor concussion. Later Brett's girlfriend, Avril, asks Brett to tattoo a letter B on her arm to show she loves him. Brett agrees but Avril gets blood poisoning.

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. [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: Brett is liable for battery when he shoves James even though he and James had agreed to fight.

- Reason that a battery is unlawful touching with a mens rea of intention or subjective recklessness;
- Reason that a shove in the chest is sufficient to be a battery;
- Reason that consent can be given for fighting only if conducted as a sport;
- Reason that there can be no valid consent to settle differences by fighting;
- Conclude that the statement is accurate.

Statement B: James is not liable for inflicting grievous bodily harm because he was aiming at Brett, not Daniel.

- Reason that breaking Daniel's jaw will be serious enough to constitute GBH;
- Reason that James needs to intend some harm or foresee the risk of some harm, not necessarily the serious harm that results;
- Reason that this would appear to be the case since he is trying to hit Brett;
- Reason that missing Brett and hitting Daniel is irrelevant using the principle of transferred malice;
- Conclude that the statement is inaccurate.

Statement C: Brett is not liable for assault occasioning actual bodily harm when James suffers concussion.

- Reason that minor concussion may constitute ABH which is defined as any hurt or injury which interferes with health or comfort;
- Reason that this is what happens to James;
- Reason that Brett does not need to have any mens rea for occasioning the harm as long as he has intention or subjective recklessness for an assault or battery;
- Reason that this occurs since Brett intends to hit James;
- Conclude that the statement is inaccurate.

Statement D: Brett is not liable for Avril's blood poisoning because she asked him to do the tattoo.

- Reason that blood poisoning could constitute actual bodily harm;
- Reason that Brett performs the act which causes the blood poisoning;
- Reason that a tattoo is a form of physical harm but is seen as equivalent to branding which is permissible;
- Reason that Avril can consent to such an act unless she is young;
- Conclude that the statement is likely to be 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 or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

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