

Mark Scheme for January 2011

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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.

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Any enquiries about publications should be addressed to:

OCR Publications
PO Box 5050
Annesley
NOTTINGHAM
NG15 0DL

Telephone: 0870 770 6622
Facsimile: 01223 552610
E-mail: publications@ocr.org.uk

- 1* Discuss the significance of the case of *Adomako* [Source 2 page 3 Special Study Materials] to the development of involuntary manslaughter. [16]

Mark Levels	AO2
Level 5	11-12
Level 4	9-10
Level 3	7-8
Level 2	4-6
Level 1	1-3

Mark Levels	AO3
4	4
3	3
2	2
1	1

Potential answers **MAY**:

Assessment Objective 2

(12)

CP1 Discuss the significance of the case – *Adomako* re-introduced gross negligence as the true test for involuntary manslaughter where there was a breach of a duty of care (approving the cases of *Bateman* and *Andrews*) and where there was no unlawful act:

- The defendant must owe the victim a duty of care which he breached causing the victim's death
- The defendant fell so far below the appropriate standard of care that their actions go beyond civil negligence in that the act or omission was so gross that it should be seen as criminal since the conduct of the defendant was 'so bad'

AP1 Recognise the major issue in the case – an anaesthetist's appeal failed against a conviction for involuntary manslaughter. The patient in his care had become disconnected from the oxygen supply during the operation and he failed to notice it for ten minutes so that the patient eventually suffered a cardiac arrest and died. This was recognised as a breach of his duty of care

AP2 Identify that previously the test in such circumstances had been that of reckless manslaughter and that following *Adomako* it was not necessary to use the term 'reckless', but that it would be perfectly acceptable for a judge to refer to 'reckless' in looking at the defendant's actions

AP3 Discuss the fact that it is the jury who decides whether the defendant has breached the duty of care and acted in a criminal way, involving as it must do a risk of death

AP4 Discuss the circularity of the test - admitted and accepted by Lord Mackay

AP5 Consider any other relevant point

LC Link to any other relevant case eg *Bateman*, *Andrews*, *Stone and Dobinson*, *Misra* etc.

Maximum three marks for Critical Point (CP)

Maximum three marks for any Analytical Point (AP)

Maximum three marks for any second Analytical Point (AP)

Maximum three marks for a relevant Linked Case (LC)

Candidates will be unable to achieve level 5 marks without discussing the key critical point arising from the case, using a linked case to show development and making two further analytical points. Candidates must make reference to significance to access level 5 marks.

Assessment Objective 3

(4)

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* In Source 3 [page 4 lines 8 - 9] the author refers to the judgment of Lord Atkin in *Andrews v DPP* [[1937] 2 AC 576 at 581] where he said: “...[O]f all crimes manslaughter appears to afford most difficulties of definition, for it concerns homicide in so many and so varying conditions”

Discuss how accurately the above statement reflects how judges have developed the law on involuntary manslaughter. [34]

Mark Levels	AO1	AO2
Level 5	14-16	13-14
Level 4	11-13	10-12
Level 3	8-10	7-9
Level 2	5-7	4-6
Level 1	1-4	1-3

Mark Levels	AO3
4	4
3	3
2	2
1	1

Potential answers **MAY**:

Assessment Objective 1

(16)

Explain that involuntary manslaughter is an unlawful killing that lacks the necessary criminal intent for murder – an intention to cause death or serious injury

Explain that there are certainly two and probably three types of involuntary manslaughter – unlawful act (constructive), gross negligence and reckless

Define unlawful act (constructive) manslaughter:

- Based on causing the death of the victim through a dangerous and unlawful act, without the malice aforethought for murder and with the *mens rea* being that for the unlawful act *Newbury and Jones v DPP*
- Identify that the act itself must be unlawful, and not a lawful act carried out unlawfully *Andrews v DPP*
- Identify that it must be criminal rather than merely tortious *Franklin*
- Identify that it must be objectively dangerous – such that a reasonable person would consider that it was likely to cause harm to the victim *Church*
- Identify that there must be a risk of physical harm rather than mere emotional disturbances *Dawson*
- Identify that the unlawful act need not be directed at the victim *Goodfellow*
- Identify that there must be an act – an omission is insufficient *Lowe*.

Define gross negligence manslaughter:

- Based on the death occurring where the defendant owes a duty to the victim and breaches the duty causing death by falling below the standard of care that is appropriate to that duty *Adomako*
- Identify that the defendant must fall so far below the standard of care that it goes beyond mere compensation and amounts to a crime ie ‘gross’ *Bateman*
- Identify that this is determined by the jury from the facts
- Identify that it can apply to omissions as well as acts *Stone & Dobinson*.

Define reckless manslaughter:

- *Actus reus* – D causes v’s death
- Measured subjectively

- The defendant foresaw the risk of serious injury or death, but carried on to take it *Lidar*; or chose to ignore an obvious risk *Pike*

Use any other relevant cases.

Assessment Objective 2

(14)

Discuss the difficulty of defining involuntary manslaughter:

- The fact that the offence is extremely broad – everything between murder and accidental death
- The fact that there is no cohesive structure – no clear and obvious link between the types
- There can be uncertainty in deciding which to charge – for example the drugs cases eg *Cato, Rogers, Dalby, Kennedy*, etc
- There is an inconsistent approach on omissions between the different classes of manslaughter so that different results could occur depending on what is charged – contrast eg *Lowe* and *Stone & Dobinson*
- Some unlawful killings might be charged under any category, but without reckless manslaughter some might escape.

Discuss the difficulties associated with the definition of unlawful act manslaughter:

- The focus is more on the unlawful act than the killing eg no need to foresee risk of death
- The difficulty of showing what constitutes an unlawful act for the purposes of the offence eg *Dalby, Mitchell, Goodfellow, Cato*
- The difficulties arising from victims dying following emotional shock eg *Dawson, Watson, Carey, Lynch*
- Difficulties associated with the drug cases eg *Kennedy*.

Discuss the difficulties associated with the definition of gross negligence manslaughter:

- The circularity of the test
- Discuss benefits of establishing a duty of care between drug-dealers and users eg *Khan and Khan, Evans*
- The fact that it is the jury that decides – so different juries could decide differently
- Discuss whether the use of civil law principles and objective standards in crime is appropriate
- Discuss the problem of deciding how far below the standard of care the defendant must fall before it becomes a crime and whether it is appropriate that this is left to the jury.

Discuss the difficulties associated with the definition of reckless manslaughter:

- The problem of showing conscious risk taking
- Whether there is any difference from gross negligence in practice.

Credit any other relevant point

Reach any logical conclusion

Credit any reference to suggested reforms.

Candidates are unable to achieve level 5 AO2 marks without a discussion that focuses on the quote. Stretch and challenge and synoptic consideration can be demonstrated by candidates whose discussion identifies the role played by judges in defining the area, and the justice of their decision making.

Assessment Objective 3

(4)

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 whether a conviction for manslaughter is possible in each of the following situations:
- (a) Brett has a heroin habit. Brett's friend, Chesney, fills a syringe with a large quantity of heroin. Brett is already too drunk on alcohol to inject himself so, at Brett's request, Chesney injects Brett with the drug. Brett dies from an overdose of heroin. (10)
- (b) Dalvinder supplies Ethan with several tablets of an illegal drug. Ethan then decides to take a large number of the tablets in one go. Ethan suffers from a massive reaction to the drug and dies as a result. (10)
- (c) Fontella, a care assistant on night shift in a nursing home, is so engrossed by a book that she is reading that she ignores the buzzer from the room of a patient, Gladys, who has a serious heart condition. Gladys is actually suffering a heart attack at the time and she is found dead the next morning. (10)

[30]

Mark Levels	AO1	AO2	(a), (b) or (c)
Level 5	9-10	17-20	9-10
Level 4	7-8	13-16	7-8
Level 3	5-6	9-12	5-6
Level 2	3-4	5-8	3-4
Level 1	1-2	1-4	1-2

Potential answers **MAY**:**Assessment Objective 1** (10)

Explain unlawful act manslaughter by using the common law tests: the requirement of an unlawful act together with its required *mens rea*; objectively dangerous as to the risk of harm to the victim (*Church*) and that the unlawful act caused the death of the victim

Explain gross negligence test using the *Adomako* clarification: there must be a breach of a duty of care which either by a negligent act or omission 'goes beyond a matter of mere compensation'

Explain reckless manslaughter as being committed by an act or omission; the defendant needs to have acted subjectively reckless to an obvious risk of injury to health (*Stone, Lidar*).

Assessment Objective 2 (20)

In the case of (a):

- CP** Identify unlawful act manslaughter as the likely charge (*Andrews*) in that the unlawful act could either be the administering of a noxious thing as in *Cato* or a simple battery
- AP1** Discuss whether it is dangerous according to the *Church* test
- AP2** Discuss the fact the defendant must have the *mens rea* for the unlawful act
- AP3** Discuss the unlawful act must have caused the death
- AP4** Credit any discussion on Subjective Reckless Manslaughter and/or Gross Negligence Manslaughter
- CON** Reason that if so then a conviction for unlawful act manslaughter is possible.

In the case of **(b) – unlawful act manslaughter**

- AP1** Identify that unlawful act manslaughter as a potential charge (*Andrews*) and that the supply of the controlled drug is the only unlawful act, or the historic potential of 'administering' *Kennedy 1999*
- AP2** Discuss the fact the defendant must have the *mens rea* for the unlawful act
- CP1** Discuss whether it is dangerous according to the *Church* test
- CP2** Consider that causation is a problem as the supply of the drug did not cause the death since the voluntary act of taking excessive quantities of the drug broke the chain of causation as in *Kennedy*
- CON** Reason that there can be no conviction for unlawful act manslaughter.

In the case of **(b) – gross negligence manslaughter**

- CP3** Identify gross negligence manslaughter as a potential charge (*Adomako*) and discuss the possibility of a duty of care owed by *Dalvinder Khan, Evans, Miller*
- AP3** Consider whether *Dalvinder's* actions breached the duty and caused the death
- AP4** Consider whether, in considering the risk of death, her behaviour was so bad that it amounts to a crime
- CON** Reach any sensible conclusion

In the case of **(c)**:

- AP1** Identify gross negligence manslaughter as the likely charge and consider that *Fontella* does owe a duty to *Gladys* to act (contractual *Pittwood* or doctor-patient *Adomako*)
- AP2** Consider that the question for the jury is whether she fell so far below the standard of behaviour to be expected of her and therefore breaching the duty
- AP3** Credit any discussion of the difficulty of proving causation
- CP** Consider whether, in considering the risk of death, her behaviour was so bad that it amounts to a crime
- CON** Reach any sensible conclusion.

For each part:

- Maximum three marks for discussing the relevant Critical Point (CP)
- Maximum three marks for discussing an Analytical Point (AP)
- Maximum three marks for discussing a second Analytical Point (AP)
- Maximum one mark for a suitable conclusion to the scenario (CON)

Candidates will be unable to achieve level 5 marks without discussing the critical point and a relevant case.

Annotations**Questions 1 and 3**

P1, P2 etc	to indicate the point indentified
CP	to indicate the critical point identified
P1p	to indicate that a part of the point has been identified
R	repetition
{	irrelevant (use for more than a couple of lines of text otherwise use the following)
N/R	not relevant
N/Q	not quite
S/O	sort of
S	significant (as per question 1)
CON	conclusion (question 3)

Question 2

✓	knowledge (AO1)
def	definition (AO1)
def/s	definition/statute (AO1)
C1 etc	to indicate cases (AO1)
C1+	to indicate a case which has been well developed
AO2	to indicate a bold comment
AO2+	to indicate developed comment/discussion
AO2(LTQ)	to indicate a bold comment that is linked to the quote
AO2(LTQ)+ (AO2)	to indicate a developed comment/discussion that is linked to the quote vague comment
LTS	indicates either AO1/AO2 comment that is linked to the source
R	repetition
{	irrelevant (use for more than a couple of lines of text otherwise use the following)
N/R	not relevant
N/Q	not quite
S/O	sort of

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

14 – 19 Qualifications (General)

Telephone: 01223 553998

Facsimile: 01223 552627

Email: general.qualifications@ocr.org.uk

www.ocr.org.uk

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Head office
Telephone: 01223 552552
Facsimile: 01223 552553

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