

Mark Scheme for June 2011

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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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Section A

- 1* 'The role of causation in the *actus reus* of a crime is fundamental in establishing criminal liability but it is not without problems.'

Discuss 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

Principle of discrimination – The extent to which discussion ties the topic of causation with its fundamental nature (required for a conviction) and its problems (such as differences in types of causation and levels of proof).

Potential answers **MAY**:

Assessment Objective 1 – Knowledge and understanding

[25]

Explain the role of causation:

- Essential element when looking to establish an *actus reus* in result crimes
- There needs to be evidence to show that the defendant caused the consequence.

Explain the different types of causation – factual and legal:

Explain causation in fact:

- 'but for' test – without the defendant's act the prohibited consequence would not have occurred – *White, Roberts, Pagett*.

Explain causation in law:

- Defendant's act must be more than minimal cause of the harm – *Kimsey*
- Defendant must accelerate the victim's death – *Adams*
- Defendant must take the victim as they find them – *Holland, Blaue, Dear*.

Explain that the chain of causation can be broken by an intervening act:

- Medical treatment – *Smith, Cheshire, Jordan*
- Life support machines – *Malcherek and Steele*
- Victim's own act and 'daftness' – *Roberts, Williams and Davis, Marjoram, Corbett*
- Free, voluntary and informed action of third parties – *Pagett, Haystead, Michael*

Credit explanation of coincidence and doctrine of continuing acts – *Thabo Meli, Church, Fagan v MPC, Le Brun*.

Assessment Objective 2 – Analysis, evaluation and application**[20]**

Discuss any or all of the following areas with regard to causation:

- Does the issue of causation have a base in moral justification and does blame play more of a part than objective factual proof?
- The fairness of causation in fact and the but for test, the ease with which the elements of the test can be defined and the influence this has on jury decision making
- Is causation in law too hard to prove and how heavy is the influence of policy, especially in scenarios involving doctors and the police?
- The daftness test and fairness of the thin skull test – do they work, should there be limits and if so where should they be drawn?
- The role of third parties and whether the law is clear on this area
- Should a defendant be liable if a victim refuses treatment and how can the reasonableness of that decision be tested?
- Should the fright or flight reflex be relevant when establishing liability?
- Policy issues relating to coincidence and continuing acts.

Reach any sensible conclusion.

Candidates are unlikely to achieve the descriptor for Level 5 AO2 without a discussion that focuses on both causation 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 – Communication and presentation**[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 defence of consent struggles to balance the needs of the individual with the constraints necessary in a modern society.'

Discuss this view of the defence of consent.

[50]

Mark Levels	AO1	AO2
Level 5	21-25	17-20
Level 4	16-20	13-16
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Level 1	1-5	1-4

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

Principle of discrimination – the extent to which discussion ties together the topic of consent and the difficulties in balancing individual needs (focusing on responsibility for actions) and the wider needs of society (such as public protection and deterrence).

Potential answers **MAY**:

Assessment Objective 1 – Knowledge and understanding

[25]

Explain the area of non fatal offences against the person as being where consent plays a significant role

Explain that everyday life presupposes some limiting of the defence

Explain that the presence of consent means that no offence has taken place

Explain the elements of consent:

- Must be real – *Tabassum, Olugboja, Richardson, Cuerrier, Dica*
- Can be implied – *Wilson v Pringle*
- An adult must have the capacity to consent
- Limited nature of defence – does not normally apply to section 47 OAPA 1861 offence unless one of certain exceptions – *AG Ref (No 6 of 1980)*
- Can be defence in physical contact sports if within the rules of the game – *Billingshurst, Barnes*
- Influenced by public interest – *Brown, Wilson, Emmett*
- Horseplay can give rise to defence – *Jones, Aitken*
- Reasonable surgical interference, injections, tattooing and body piercing give rise to consent – *Burrell v Harmer*
- An honest but mistaken belief in consent is effective as a defence – *Morgan, Williams (Gladstone)*
- Not always available in sexual offences – section 5 Sexual Offences Act 2003, *R v G*
- No defence in relation to euthanasia – *Pretty*.

Assessment Objective 2 – Analysis, evaluation and application**[20]**

Discuss any or all of the following areas:

- Difficulties in striking a balance between individual freedom and social paternalism
- Does social paternalism go too far and is there a conflict with the Human Rights Act 1998 and the provisions of the ECHR?
- Sport – problems delineating inside and outside the rules of the game and inconsistency in that some sports involve deliberate harm which is allowed and yet in others less than deliberate harm constitutes an offence
- Social utility issues in surgical operations – what can be consented to? What should be consented to?
- Policy issues involving sexual offences – what about informed consent?
- Difficulties in reconciling court decisions in sexual situations and those involving horseplay
- Comment on provisions put forward by the Law Commission and consideration of whether Parliament should legislate and, if so, in what form
- Difficulties surrounding euthanasia.

Reach any sensible conclusion.

Candidates are unlikely to achieve the descriptor for Level 5 AO2 without a discussion that focuses on both the defence of consent 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 – Communication and presentation**[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 current role of strict liability offences in the English legal system. [50]

Mark Levels	AO1	AO2
Level 5	21-25	17-20
Level 4	16-20	13-16
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Mark Levels	AO3
Level 4	5
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Level 2	3
Level 1	1-2

Principle of discrimination – the extent to which discussion focuses on the topic of strict liability and its current role (by looking at the areas it covers and how it is applied) and its advantages and disadvantages (including its success and proposals for reform).

Potential answers **MAY**:

Assessment Objective 1 – Knowledge and understanding**[25]**

Explain strict liability:

- No need to prove *mens rea* in relation to at least one element of the *actus reus* – *Callow v Tillstone, Storkwain*
- Distinguished from absolute liability – *Larsonneur, Winzar*
- Frequency of occurrence but move away from such liability in areas such as sexual offences – *Prince, B v DPP*
- Source of most offences is statutory but limited exceptions – *Lemon*
- Statutory interpretation is important
- Many offences summary only.

Explain basic principles – *Gammon*:

- Presumption in favour of *mens rea* – *Sweet v Parsley*
- Quasi crimes/regulatory offences – *Callow v Tillstone, Cundy v Le Cocq, Shah and Shah, Alphacell v Woodward*
- Issues of social concern – *Blake, Shah and Shah*
- Statutory wording – words such as ‘cause’, ‘possession’, ‘knowingly’, ‘wilfully’ etc – *Warner, Empress Cars, Sheppard and Sheppard, Wings v Ellis*
- Size of penalty and promotion of the law – *Lim Chin Aik*.

Explain areas in which strict liability is commonly found

Explain absence of mistake as a defence – *Cundy v Le Cocq, Sherras v De Rutzen*

Explain development of defence of due diligence and its limits – *Smedleys v Breed, Shah and Shah, Tesco v Nattrass*.

Assessment Objective 2 – Analysis, evaluation and application**[20]**

Discuss any or all of the following issues:

Commonly used area of law with many advantages:

- Deals with policy issues and promotes care
- Enhances social utility, has deterrent value and is easily enforced
- Saves court time by avoiding the difficulty of proving *mens rea*
- There is no threat to individual liberty and can create decisions consistent with human rights
- Prevents businesses profiting from taking risks and due diligence defences can be included.

Area of law with many disadvantages:

- Imposes liability on those who are not blameworthy creating injustice and can be ineffective as those who are unaware of risks can be guilty
- Offers little administrative advantage and there is no evidence that standards improve
- Application can be inconsistent due to reliance on interpretation and discretion and conviction can be too easy
- Some offences have considerable social stigma.

Consider the extent to which such offences are justifiable and the role of due diligence

Should Parliament do a better job when legislating and is there too much legislation?

Proposals for reform

Reach any sensible conclusion.

Candidates are unlikely to achieve the descriptor for Level 5 AO2 without a discussion that focuses on both strict liability 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 – Communication and presentation**[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* Millie and Carl join an on-line dating agency. They chat, meet after two weeks and marry six weeks later. On their wedding night Carl gets drunk and hits Millie. Carl apologises. Carl is often romantic but gets violent when he has been drinking. On their wedding anniversary Carl and Millie drink a bottle of wine. Carl calls Millie “a useless bitch” and smashes the empty bottle over her head. Eventually Millie goes to the doctor and he puts her on anti-depressants. A month later, Carl punches Millie again and goes to bed. After an hour, Millie hears Carl snoring and she stabs him with a kitchen knife, killing him immediately. Millie dials 999 and when the ambulance arrives she is holding Carl sobbing “I love you”.

Discuss the criminal liability, if any, of Millie.

[50]

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Level 5	21-25	17-20
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Level 2	6-10	5-8
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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 – Knowledge and understanding

[25]

Define and explain the offence of murder – causing the death of a human being with direct or oblique intent

Define and explain the offence of voluntary manslaughter – murder reduced by the use of a specific and partial defence

Define and explain the defence of provocation – section 3 Homicide Act 1957:

- Need for evidence of provocation – *Acott, Rossiter*
- Need for something said or done or both together – *Baille, Doughty*
- Need for a sudden and temporary loss of control but not the requirement of imminence/immediacy – *Duffy, Ibrams and Gregory, Thornton, Ahluwalia, Humphreys*
- Application of the ‘reasonable man’ test and relevant characteristics – *Camplin, Holley, Mohammed, Karimi and James, Moses, Weller, Miao*.

Define and explain the defence of diminished responsibility – section 2 Homicide Act 1957:

- Need for an abnormality of mind – *Byrne*
- Need for substantial impairment – *Sanderson, Lloyd*
- Need for the cause to be internal – *Dietschmann*
- Need for the cause to be specified – *Seers, Ahluwalia, Hobson*
- Requirement of medical evidence.

OR

Define and explain defence of lack of self control – section 54 Coroners and Justice Act 2009:

- Section 54(1) – loss of self-control can come from an act or an omission
- Section 54(2) – need not be sudden

- Section 54(3) – look at whether a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in same or in a similar way to D – circumstances means everything other than those whose only relevance to conduct is their bear on the capacity for tolerance or self-restraint.
- Section 55(3) – a qualifying trigger can be fear of serious violence from V against D or another identified person
- Section 55(4) – a qualifying trigger can be thing or things done or said (or both) which (a) constitute circumstances of an extremely grave character, and (b) cause D to have a justifiable sense of being seriously wronged
- Section 55(5) – a qualifying trigger can be a combination of the two categories above
- Section 55(6) – to decide if there is a qualifying trigger (a) D's fear of serious violence is to be disregarded if self induced, (b) sense of being seriously wronged to be disregarded if not justified as had been self induced and (c) fact that a thing done or said constituted sexual infidelity is to be disregarded.

Define and explain defence of diminished responsibility – section 52 Coroners and Justice Act 2009:

- Abnormality of mental functioning arising from a recognised medical condition
- Substantially impaired D's ability to do one or more of understanding the nature of their conduct, forming a rational judgment, or exercising self-control
- Provides an explanation for D's acts and omissions.

Assessment Objective 2 – Analysis, evaluation and application

[20]

Identify murder

Identify voluntary manslaughter

Identify defence of provocation – section 3 Homicide Act 1957

Identify defence of diminished responsibility – section 2 Homicide Act 1957

OR

Identify defence of loss of self control – section 54 and 55 Coroners and Justice Act 2009

Identify defence of diminished responsibility – section 52 Coroners and Justice Act 2009

In the case of **Carl's** death:

- Millie stabbing Carl will satisfy the *actus reus* of unlawful killing and the use of a knife suggests the specific intent necessary for a murder charge.

In the case of **provocation/loss of self control** – successfully raising this specific and partial defence has the effect of reducing liability to voluntary manslaughter:

- Evidence of provocation is to be found in Carl repeatedly hitting Millie and calling her a 'useless bitch' (or is this a qualifying trigger?)
- The time lapse of an hour may appear to be a 'cooling off' period which could invalidate the defence; although Millie's loss of temper could still be sudden but the longer the time delay the less likely this is to be the case (but this may give to the issue of revenge under 2009 Act)
- The fact that Millie appears to be suffering from 'battered woman syndrome' and/or depression will be taken into account as a relevant characteristic if it affects the gravity of the provocation to a reasonable woman of the same age and with the same permanent characteristics.

Conclude that although provocation/loss of self may succeed Millie may also need to consider the alternative defence of diminished responsibility:

- 'Battered woman syndrome' and/or depression can be classed as an abnormality of mind/abnormality of mental function

- The impairment it causes Millie is likely to be classed as substantial and her mental state may also be evidenced by the fact that she is distraught at what she has done (or link to inability to form a rational judgment, or exercise self-control under 2009 Act)
- The cause of the impairment is mental due to the way Millie has been treated by Carl and how she has reacted to that
- Millie already has the evidence of one doctor and another is needed
Conclude that if provocation is unavailable Millie is likely to succeed using the defence of diminished responsibility and so be convicted of voluntary manslaughter.

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.

Candidates will be credited for identifying, discussing and applying the law either under the 1957 Act or the 2009 Act.

Assessment Objective 3 – Communication and presentation

[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* Yoshi is on his first visit to England. At the airport Yoshi gets into Brad's minicab to go to a hotel. Yoshi's friend has said the fare will cost about £10 but Brad says it is £20. Yoshi is surprised, he holds out some money and Brad takes £50. Brad buys a cup of coffee from a stall. He pays for the coffee with a £10 note and notices he is given change for a £20 note but Brad says nothing. Brad's wife has given him £50 for groceries but Brad spends £40 on a new shirt. Yoshi goes shopping for socks. He hides two pairs in his pocket but feels guilty and pays for one pair at the checkout.

Discuss the criminal liability, if any, of Brad and Yoshi for theft.

[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 – Knowledge and understanding

[25]

Define theft – charged under s1 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 – note limits shown in – *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 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*.

Assessment Objective 2 – Analysis, evaluation and application**[20]**

Identify theft – section 1 TA 1968

In the case of **Brad taking £50** from Yoshi:

- Clear evidence of an appropriation as there is an interference with the owner's rights and although Brad might argue that Yoshi consented to the taking by holding out some money this does not prevent an appropriation
- The £50 constitutes property and belongs to another
- Brad's increasing of the fare and then taking an excessive amount of money from Yoshi's wallet suggests he does not fit any of the statutory exceptions in section 2 and a jury is likely to see his conduct as dishonest
- Brad appears to have an intention to permanently deprive and so it seems likely that this will constitute theft.

In relation to the **excess change**:

- Elements of theft appear to be complete
- Particular relevance of section 5(4) – Brad sees he is given too much change and makes a deliberate decision to keep it immediately and so by not saying anything when it is realistic for him to do so he becomes dishonest.

In the case of **Brad buying a new shirt**:

- Elements of theft appear to be complete
- Particular relevance of section 5(3) – money has been given to Brad for a particular purpose and so when he buys a shirt with the money he becomes dishonest.
- Brad could use sections 2(1)(a) or 2(1)(b) to suggest that he is not dishonest as he has an honest belief in a legal right or consent to using the money based on marriage.

In the case of **Yoshi and the socks**:

- Hiding two pairs of socks fulfils all the elements of theft and Yoshi is clearly dishonest in the eyes of the jury by hiding the socks
- His later decision to pay for one pair does not, in law, prevent him being convicted as the theft is complete when he puts the socks in his pocket if all the other elements of theft are present at the time.

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 – Communication and presentation**[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* Hamish and Gregor share a bottle of vodka in a park. They are very rowdy and the park keeper, Jack, approaches to tell them to quieten down. Hamish thinks Jack is going to attack him so he pushes Jack hard. Jack has a heart condition and an hour later he dies of a heart attack. Gregor is on antibiotics and feeling very strange. He collapses and Hamish dials 999. Gregor is taken to hospital. Doctor Brown examines Gregor. He says Gregor is just drunk and needs to sleep it off. The combined effects of the vodka and the antibiotics send Gregor into a coma. Six months later Gregor's life support machine is turned off.

Discuss the criminal liability, if any, of Hamish for the death of Jack and Doctor Brown for the death of Gregor. Do not discuss the issue of causation in detail. [50]

Mark Levels	AO1	AO2
Level 5	21-25	17-20
Level 4	16-20	13-16
Level 3	11-15	9-12
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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 – Knowledge and understanding

[25]

Define murder:

- Unlawful killing of a human being
- Intention to kill/GBH or foresight of death/GBH as a virtual certainty.

Define involuntary manslaughter:

- Unlawful killing of a human being without the high level of *mens rea* necessary for murder.

Define and explain unlawful and dangerous act/constructive manslaughter:

- Need for a positive and unlawful act – *Mitchell, Larkin, Church*
- Unlawful act should be dangerous – *Dawson, Watson*
- Requirement that the positive act be done intentionally – *Goodfellow, Newbury and Jones*
- Requirement that the chain of causation be intact and death ensue
- Reasonable man needs to foresee the risk of some harm to some other person but not necessarily the harm which results.

Define and explain gross negligence manslaughter:

- Was there a duty of care?
- Was the duty of care breached?
- Was there a risk of death and did death result?
- Was the negligence such as to make the defendant criminally liable in the eyes of the jury? – *Adomako*.

Define and explain the defence of self/private defence:

- A complete defence based on the use of reasonable force in circumstances where there is an honest belief in an imminent attack – *Williams (Gladstone)*
- effect of intoxication which induces a mistaken belief as to a need for self-defence is to negate the defence – *O’Grady*.

Define and explain the defence of voluntary intoxication:

- Acts as a partial defence to crimes of specific intent but is no defence to crimes of basic intent – *Majewski*.

Assessment Objective 2 – Analysis, evaluation and application

[20]

Identify murder

Identify lack of *mens rea* for murder

Identify involuntary manslaughter

Identify unlawful act/constructive manslaughter

Identify gross negligence manslaughter

Identify subjective reckless manslaughter

Identify self/private defence

Identify intoxication

In the case of **Hamish**:

Unlawful act/constructive manslaughter appears to be the most likely charge:

- There has been a positive, unlawful and dangerous act (a battery) as Hamish pushes Jack
- This act is done intentionally
- A reasonable man would see a risk of some harm from Hamish’s action
- Hamish may claim self defence but if his mistaken belief is induced by intoxication his defence is likely to fail.

Credit discussion of subjective reckless manslaughter and conclude that Hamish would still be liable.

In the case of **Doctor Brown**:

Gross negligence manslaughter appears to be the most likely charge:

- Doctor Brown has a duty of care to Gregor when he is brought into hospital
- Consider whether the duty of care is broken when Doctor Brown decides Gregor is just drunk
- There is a risk of death and death is caused
- Would the jury see Doctor’s Brown’s act as so grossly negligent as to be criminal? Possibly not on the basis of decided cases but an alternative argument is viable.

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 – Communication and presentation

[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 **Sergei is driving his car at speed. Dasha, a pedestrian, has to leap out of Sergei's way and she falls over, suffering cuts and bruises. Adrian, a passer by, helps Dasha to her feet. Dasha's boyfriend, Miroslav, sees Dasha fall. He runs over and shouts at Adrian "Let her go or die!". Miroslav drags Sergei from the car and kicks him repeatedly, breaking three of Sergei's ribs.**

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: Sergei will be liable for a section 20 OAPA 1861 offence.

Statement B: Sergei will be liable for a section 47 OAPA 1861 offence.

Statement C: Miroslav will not be guilty of an assault on Adrian.

Statement D: Miroslav will be liable of a section 18 OAPA 1861 offence.

[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 – Analysis, evaluation and application

[20]

Statement A: Sergei will be liable for a section 20 OAPA 1861 offence.

P1 Reason that this offence requires the infliction of a wound or GBH

P2 Reason that the cuts and bruises Dasha suffers are unlikely to be GBH

P3 Reason that Sergei must act maliciously and have intention or subjective recklessness to cause some harm

P4 Reason that this is present since Sergei is speeding

P5 Conclude that the statement is inaccurate.

OR

P2a Reason that a cut breaking the layers of Dasha's skin is a wound

P3a Reason that Sergei must act maliciously and have intention or subjective recklessness to cause some harm

P4a Reason that this is present since Sergei is speeding

P5a Conclude that the statement is accurate.

Statement B: Sergei will be liable for a section 47 OAPA 1861 offence.

P1 Reason that this offence requires the causing of actual bodily harm, any interference with health or comfort

P2 Reason that the cuts and bruises Dasha suffers are likely to be sufficient harm

P3 Reason that Sergei must have intention or subjective recklessness for the common assault but not for the harm that results

P4 Reason that Sergei was reckless in causing a common assault by speeding

P5 Conclude that the statement is accurate.

Statement C: Miroslav will not be guilty of an assault on Adrian.

P1 Reason that an assault requires a person to apprehend immediate and unlawful personal violence and words can be an assault

P2 Reason that Miroslav threatening to kill Adrian is a sufficiently serious threat

P3 Reason that the defendant must have intention or subjective recklessness to cause the consequence

P4 Reason that Miroslav seems to have intention given the speed at which he rushes over

P5 Conclude that the statement is inaccurate.

Statement D: Miroslav will be liable for a section 18 OAPA 1861 offence.

P1 Reason that this offence requires Miroslav to cause a wound or GBH

P2 Reason that broken ribs would constitute serious harm

P3 Reason that Miroslav must have intention for the unlawful act and the serious harm which is caused

P4 Reason that dragging Sergei from his car and kicking him repeatedly would appear to be evidence of intention

P5 Conclude that the statement is accurate.

- 8 Sophie's husband, Graham, has left her to live with Pauline. Sophie goes to Pauline's house with a knife to kill Graham but he is out so she leaves. Later that night Sophie returns to Pauline's house and climbs in through an open window, intending to frighten Graham. Once inside Sophie decides to start a fire but Pauline appears. Sophie grabs Pauline and takes the expensive watch she is wearing. Sophie runs away, dropping the watch.

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: Sophie will be liable for burglary under section 9(1)(a) Theft Act 1968.

Statement B: Sophie will be liable for the attempted murder of Graham.

Statement C: Sophie will be liable for robbery under section 8 Theft Act 1968.

Statement D: Sophie will not be liable for burglary under section 9(1)(b) Theft Act 1968. [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 – Analysis, evaluation and application [20]

Statement A: Sophie will be liable for burglary under section 9(1)(a) Theft Act 1968.

P1 Reason that this offence requires Sophie to enter a building or part of a building as a trespasser with the intention to steal, inflict GBH or cause unlawful damage

P2 Reason that the offence is complete at the time of entry

P3 Reason that Sophie enters Pauline's house at the second attempt as a trespasser

P4 Reason that her intention to scare Graham is not relevant, she does not have the *mens rea* for any of the three ulterior offences

P5 Conclude that the statement is inaccurate.

Statement B: Sophie will be liable for the attempted murder of Graham.

P1 Reason that attempt requires the doing of an act which is more than merely preparatory

P2 Reason that because Sophie does not come into contact with Graham her actions are not more than merely preparatory

P3 Reason that this act must be done intentionally

P4 Reason that Sophie's actions suggests that she has the necessary intention

P5 Conclude that the statement is inaccurate.

Statement C: Sophie will be liable for robbery under section 8 Theft Act 1968.

P1 Reason that robbery requires theft accompanied by the use or threat of force

P2 Reason that when Sophie grabs Pauline this would be force

P3 Reason that the force occurs before or at the time of stealing

P4 Reason that Sophie commits theft when she takes the watch

P5 Conclude that the statement is accurate.

Statement D: Sophie will not be liable for burglary under section 9(1)(b) Theft Act 1968.

P1 Reason that Sophie needs to enter a building or part of a building as a trespasser

P2 Reason that Sophie is a trespasser when she enters through a window

P3 Reason that having entered Sophie must then attempt or commit theft or the infliction of GBH

P4 Reason that there is a theft

P5 Conclude that the statement is inaccurate.

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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