

Mark Scheme for June 2011

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This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by Examiners. It does not indicate the details of the discussions which took place at an Examiners' meeting before marking commenced.

All Examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

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

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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.

For question 1 AO3 marks should be awarded as follows:

- If 1-3 marks awarded for AO2 = award 1 AO3 mark
- If 4-6 marks awarded for AO2 = award 2 AO3 marks
- If 7-9 marks awarded for AO2 = award 3 AO3 marks
- If 10-12 marks awarded for AO2 = award 4 AO3 marks

For question 2 AO3 marks should be awarded as follows:

- If 1-8 marks awarded for AO1/AO2 = award 1 AO3 mark
- If 9-16 marks awarded for AO1/AO2 = award 2 AO3 marks
- If 17-23 marks awarded for AO1/AO2 = award 3 AO3 marks
- If 24-30 marks awarded for AO1/AO2 = award 4 AO3 marks

- 1* Discuss the development made to the law of involuntary manslaughter in the case of *R v Church* [Source 1 page 2 Special Study Materials]. [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
Level 4	4
Level 3	3
Level 2	2
Level 1	1

Potential answers **MAY**:

Assessment Objective 2 – Analysis, evaluation and application [12]

CP1 Discuss the main development in the case – *Church* introduced the ‘dangerousness’ test to unlawful act manslaughter:

- The defendant’s unlawful act must also be a dangerous act
- What is dangerous should be measured objectively
- In other words, the act must be such as all sober and reasonable people would inevitably recognise must subject the other person to, at least, the risk of some harm, albeit not serious harm.

AP1 Discuss the objective test remains one of controversy since it involves an objective test rather than one simply from the defendant’s own perspective. Discuss the fairness of convicting a person irrespective of whether they have foreseen any injury let alone death.

AP2 The Court of Appeal developed the law in clarifying the definition of unlawful act manslaughter by stating it would not be manslaughter simply because the act was unlawful, since the existence of some degree of *mens rea* is an essential element in the crime. Previously the law had stated that if an unlawful act of violence (without intent to kill) caused death, then this would be manslaughter regardless of whether D or a reasonable person saw a risk of death. In cases before *Church*, D would have been guilty of manslaughter and this was decided to have been a misdirection at trial.

AP3 Recognise the major issue in the case – the defendant’s appeal failed against conviction for involuntary manslaughter. The defendant punched a woman during a violent argument after she taunted him for failing to satisfy her sexually. He threw, what he thought was her dead body into a river, but she was only unconscious and drowned. This was recognised as a dangerous, unlawful act.

AP4 *Church* reiterated the ‘series of acts’ rule in criminal law. In other words the AR and the MR must be present at the same time. However, the courts have allowed the AR and MR to be formed at some point during a series of events. When *Church* hit V he had the MR for a Homicide but not the AR (no-one died). When he later disposed of the ‘body’ (whilst still alive), he had the AR of murder (D was then unlawfully killed) but not the MR (no intent to kill).

AP5 Consider any other relevant point eg transferred malice, thin-skull rule.

LC Link to any other relevant case eg *Newbury & Jones, Dawson, Watson, Thabo Meli*.

Maximum three marks for discussion of the Critical Point (CP)

Maximum three marks for discussion of each Analytical Point (AP)*

Maximum three marks for discussion of a relevant Linked Case (LC)

Candidates will be unable to achieve Level 5 without referring to the development in *Church* to the law on involuntary manslaughter, without reference to the Critical Point and without reference to a linked case. Therefore, candidates who only discuss the analytical points* will be unable to achieve above Level 4.

Assessment Objective 3 – Communication and presentation

[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 5 [page 6 lines 26-29 Special Study Materials] the author suggests that “[unlawful act or constructive manslaughter] ... [is] ... harsh in the effect on the accused”

Discuss the extent to which the law on involuntary manslaughter has developed so that it is “harsh in the effect on the accused”. [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
Level 4	4
Level 3	3
Level 2	2
Level 1	1

Potential answers **MAY**:

Assessment Objective 1 – Knowledge and understanding [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, A.G’s Reference No 3 of 1994*
- 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 *Bateman* – and falls below the standard of care that is appropriate to that duty *Adomako* and the breach of duty causes death
- 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’
- Identify a risk of death *Misra*
- 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:

- 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*.

Candidates will be unlikely to achieve Level 5 without a well developed explanation of both (or all three) types of IM, well developed definitions of both (or all three) types and 8 relevant cases, 6 well done (facts, ratio etc).

Candidates will be unlikely to achieve Level 4 without a good explanation of one* or both types of IM, good definitions and 6 relevant cases, 4 well done (facts, ratio etc).

*Candidates who only discuss one type of IM (well) will be unable to achieve above 11 marks.

Candidates will be unlikely to achieve Level 3 without a limited explanation of either or both types of IM, limited definitions and 2 relevant cases, 1 which is well done (facts, ratio etc)

Candidates will be unlikely to achieve Level 2 without a very limited explanation of either or both types of IM, very limited definitions, or none at all. No cases are expected.

Assessment Objective 2 – Analysis, evaluation and application

[14]

Discuss whether, in general, involuntary manslaughter's development is harsh on the accused:

- The fact that the offences cover everything between murder and accidental death – so very different crimes are charged with the same offence eg compare *Church* with *Stone & Dobinson*.

Discuss whether unlawful act manslaughter's development is harsh on the accused:

- The potential injustice in unlawful act manslaughter of construing manslaughter from the *mens rea* to commit a possibly far less serious crime
- Whether convicting someone without them having the *mens rea* for a serious offence is fair
- The doubt over whether the unlawful act need be directed at the victim *Goodfellow* and whether this has been unfair to the defendant or is justified
- Whether the judges have got it right in relation to supplying class A drugs eg *Dalby*, *Cato*, *Rogers*, *Kennedy*
- Whether the rules arising from victims dying following emotional shock have proved either fair or justified eg *Dawson*, *Watson*
- The fact that the standpoint of a sober, reasonable person is used as to the 'dangerousness' of the unlawful act; and whether this is fair on defendants who didn't or couldn't have seen a death being caused *Newbury and Jones*
- Consider that the Law Commission has called the offence 'unprincipled' and the offences' proposed reforms.

Discuss whether gross negligence manslaughter's development is harsh on the accused:

- Whether the circularity of the definition of gross negligence manslaughter is either fair or justified *Adomako*
- Whether the role of the jury in gross negligence manslaughter is either fair or justified
- Whether different juries could convict or acquit on the same facts in gross negligence manslaughter is either fair or justified
- The fact that there is no set measure on how far below the standard of care the defendant must fall for there to be gross negligence is either fair or justified to the defendant or justified in deterring this type of manslaughter; *Bateman*
- Consider the implications of the decision in *Misra* for the requirement of risk of death

- Consider the Law Commission's proposed reforms of gross negligence manslaughter.

Discuss whether subjective reckless manslaughter's development is harsh on the accused:

- The fact that the offence of reckless killing lessens 'the moral distance between the harm done and that foreseen' since a defendant will not be guilty merely because some harm is foreseen
- Credit reference to objective reckless manslaughter, *Seymour*.

Credit any other relevant point

Credit any other reference to suggested reforms

Reach any logical conclusion.

Candidates will be unable to achieve AO2 Level 5 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, or not, of their decision making.

Candidates will be unlikely to achieve Level 5 without a high level of evaluation of both types of IM and high level focus on the quote.

Candidates will be unlikely to achieve Level 4 without a good evaluation of one* or both types of IM and a good focus on the quote. * Candidates who only discuss one type of IM (well) will be unable to achieve above 10 marks.

Candidates will be unlikely to achieve Level 3 without an adequate evaluation of either or both types of IM and a focus on the quote.

Candidates will be unlikely to achieve Level 2 without limited evaluation of either or both types of IM. There may be little or no focus on the quote.

Assessment Objective 3 – Communication and presentation

[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) Gary, an off licence manager, sells a bottle of whisky to Harry, aged ten. Harry then goes to a nearby park and drinks the whole bottle. Harry falls unconscious and dies when he inhales his own vomit. (10)
- (b) Imran breaks into a house intending to steal money. The occupant of the house, Jake, who is 80, is terrified. Imran ties Jake up and puts a gag over Jake's mouth. Jake has a weak heart and later dies. (10)
- (c) Kerry and Liam are girlfriend and boyfriend. While they are having sex Liam excitedly holds Kerry tightly round the neck and kisses her passionately for several minutes. Kerry cannot breathe and she dies. (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 – Knowledge and understanding [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*.

Use any other relevant cases.

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

In the case of (a): Unlawful Act Manslaughter

AP1 Identify unlawful act manslaughter as the likely charge *Andrews v DPP* in that the unlawful act is selling alcohol to a person under 18

AP2 Discuss whether the sale of alcohol to a ten year old is dangerous according to *Church/Kennedy* test

AP3 Discuss the fact the defendant must have the *mens rea* for the unlawful act

CP1 Discuss that the unlawful act must have caused the death. However, there may be a problem with causation as merely supplying the alcohol did not cause the death. The death occurred as a result of Harry's voluntary act which may have broken the chain of causation *Kennedy*

CON Reach any sensible conclusion regarding unlawful act/constructive manslaughter.

In the case of **(a)**: Gross Negligence Manslaughter

- AP4** Identify that gross negligence manslaughter as a potential charge *Adomako* and discuss whether Gary, as an off-licence manager, owes a duty of care to Harry not to serve him alcohol
- AP5** Consider whether Gary's actions in serving Harry fall so far below the appropriate standard required of Gary *Adomako* causing the death
- CP2** Consider whether, in considering the risk of death *Misra*, his behaviour was so bad that it can be considered gross
- AP6** Credit any discussion of reckless manslaughter
- CON** Reach any sensible conclusion regarding gross negligence manslaughter.

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

- AP1** Identify that unlawful act manslaughter *Andrews v DPP* as the likely charge in that there is a burglary during which there is also an assault and battery
- AP2** Discuss whether it is dangerous according to the *Church* test. Consider also whether gagging Jake may be considered dangerous. Credit discussion that a reasonable person would recognise Jake's frailty *Dawson, Watson*
- AP3** Discuss the fact the defendant must have the *mens rea* for the unlawful act.
- CP1** Discuss that the unlawful act must have caused the death. However, there may be a problem regarding causation as to whether Imran would have appreciated that Jake's age may lead to harm as in *Watson* or whether *Dawson* applies
- AP4** Credit any discussion of reckless manslaughter
- CON** Reason that if so then a conviction for unlawful act manslaughter is possible.

In the case of **(c)**: Unlawful Act Manslaughter

- CP1** Identify that unlawful act manslaughter *Andrews v DPP* as a potential, but unlikely charge since Kerry is consenting to the act. If Liam has exceeded the consent, then there may be an unlawful act
- AP1** Discuss whether holding Kerry tightly around the neck is dangerous according to the *Church* test, *Emmett*
- AP2** Discuss the fact the defendant must have the *mens rea* for the unlawful act.
- AP3** Discuss that the unlawful act must have caused the death
- CON** Reason that if so then a conviction for unlawful act manslaughter is possible.

In the case of **(c)**: Gross Negligence Manslaughter

- AP4** Identify that gross negligence manslaughter as a potential charge *Adomako* and discuss whether Liam, as Kerry's boyfriend, owes her a duty of care
- AP5** Consider whether Liam's actions in holding Kerry tightly fall so far below the appropriate standard required of him *Miller* causing her death
- CP2** Consider whether there was the risk of death *Misra* that his behaviour was so bad that it can be considered gross
- AP6** Credit any discussion of reckless manslaughter
- CON** Reach any sensible conclusion regarding gross negligence manslaughter.

For each part question:

- Maximum three marks for discussing the relevant Critical Point (CP)
- Maximum three marks for discussing an analytical point (AP)
- Maximum three marks discussing a further analytical point (AP)
- Maximum one mark for a suitable conclusion to the scenario (CON).

Candidates will be unable to achieve Level 5 without discussion of the Critical Point and a relevant case.

Annotations**Questions 1 and 3**

AP1, AP2 etc	to indicate the analytical point indentified
CP	to indicate the critical point identified
AP1.1	to indicate which specific part of an analytical point has been identified (in this example, the first part of the analytical point)
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
D/DEV	development (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.

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