

Mark Scheme for January 2012

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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.

OCR will not enter into any discussion or correspondence in connection with this mark scheme.

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Annotations

Annotation	Meaning
CP	Critical point
AP1, AP2 etc	Analytical point 1, Analytical point 2
LC	Linked case
+	Well developed ...eg CP+
R(ep)	Repetition
SO	Sort of
!	Irrelevant material
C1 etc	Case
C1+	Case – well explained
✓	Credited AO1 material
(AO)2	Point (AO2)
(AO)2+	Developed point (AO2)
(AO)2++	Well developed point (AO2)
LTS	Link to source
VG	Vague
Conc	Conclusion
Def	Definition
Def/S	Definitions of statutes (A01)
A02(LTQ)	Comment or analysis linked to quote
A02(LTQ)+	Well developed comment or analysis linked to quote
S	Significance (for use in question 1)

Question	Answer	Marks	Guidance												
1*	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>CP1 Discuss the fact that the Court of Appeal clarified that only an intent to kill is sufficient <i>mens rea</i> for attempted murder and that an intent to cause GBH is insufficient for attempted murder. Nothing less than an intent to kill would suffice for an attempted murder since ‘<i>the intent becomes the principal ingredient of the crime</i>’. Therefore attempted murder has a higher mental element than murder.</p> <p>AP1 Discuss that the higher <i>mens rea</i> required for attempted murder over murder is arguably justified. Charging D with attempted murder when their intent was to cause serious harm only, and failing to do so, would be unjust. Credit any further discussion on the point of logicality or simplicity.</p> <p>AP2 Recognise the major issue in the case that D denied attempted murder having built a device linked to a soap dish which would have caused his wife to have an electric shock while taking a bath. He had stated the shock was an accident. The Court of Appeal upheld D’s conviction for attempted murder. However, that Court conceded that there had been a misdirection by the trial judge who had stated if the jury were satisfied that D intended to kill, or to cause GBH that D would be guilty of attempted murder</p> <p>AP3 Discuss the fact that in <i>Whybrow</i> Lord Goddard’s clarification of the common law definition of the <i>mens rea</i> for an attempt (ie intent to commit the substantive offence) was later embodied in the Criminal Attempts Act 1981 section 1(1) after being supported by the Law Commission Report in 1980</p> <p>AP4 Discuss the relationship between the decision in <i>Whybrow</i> and a potential charge under section 20 Offences Against the Person Act 1861 in relation to attempting to inflict grievous bodily harm</p> <p>AP5 Consider any other relevant (to <i>Whybrow</i>) analytical comment eg using an alternative attempted GBH charge under section 18 OAPA <i>Morrison</i> or the 2009 Law Commission Report on Attempts</p>	12	<table border="1" data-bbox="1361 272 1720 485"> <thead> <tr> <th>AO2 Level</th> <th>AO2 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>11–12</td> </tr> <tr> <td>4</td> <td>9–10</td> </tr> <tr> <td>3</td> <td>7–8</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>Marks should be awarded as follows:</p> <ul style="list-style-type: none"> • Max 3 marks for the Critical Point (CP) • Max 3 marks for <u>each</u> Analytical Point (AP) • Max 3 marks for a relevant Linked Case (LC) <p>Level 5 Responses are unlikely to achieve level 5 without discussing the CP, without using a linked case for the purpose of showing development and without making 2 well developed points.</p> <p>Re: AP5 Please note credit can only be given for comment that has direct relevance to <i>Whybrow</i>. Hence any generic comment should not be credited.</p> <p>Re: Linked case Please note credit can only be given for the link case where there is a specific link to <i>Whybrow</i>.</p>	AO2 Level	AO2 marks	5	11–12	4	9–10	3	7–8	2	4–6	1	1–3
AO2 Level	AO2 marks														
5	11–12														
4	9–10														
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Question			Answer	Marks	Guidance											
			(with reference to <i>mens rea</i>) or a discussion to the original point of appeal. LC Link to any relevant case eg <i>Bourdon, Mohan, Walker and Hayles, Fallon</i> etc													
			Assessment Objective 3 – Communication and presentation Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.	4	<table border="1"> <thead> <tr> <th>AO2 marks</th> <th>AO3 mark</th> </tr> </thead> <tbody> <tr> <td>10–12</td> <td>4</td> </tr> <tr> <td>7–9</td> <td>3</td> </tr> <tr> <td>4–6</td> <td>2</td> </tr> <tr> <td>1–3</td> <td>1</td> </tr> </tbody> </table>	AO2 marks	AO3 mark	10–12	4	7–9	3	4–6	2	1–3	1	
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10–12	4															
7–9	3															
4–6	2															
1–3	1															

Question	Answer	Marks	Guidance												
2*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain the historic development of various pre-1981 common law tests on attempts.</p> <p>Explain the 1981 Criminal Attempts Act so as to define the <i>actus reus</i> of the offence. In particular section 1 – doing an act which is more than merely preparatory.</p> <p>Explain the importance of establishing at what point a criminal intention can be said to have progressed to the stage of an attempt – <i>Geddes</i> etc.</p> <p>Explain how the courts have approached the dividing line between an act which is an attempted crime and one which is merely preparatory:</p> <ul style="list-style-type: none"> • Cite relevant cases that provide principles applying the meaning of ‘more than merely preparatory’. These may include: <i>White, Boyle and Boyle, Jones, Tothill, Dagnall, Griffin, R v R 2009</i> etc. • Cite relevant cases that provide principles applying the meaning of ‘merely preparatory’. These may include: <i>Gullefer, Campbell, Geddes, Bowles and Bowles, R v K 2009</i> etc. • Explain that the defendant need not have performed the exact last act(s) before the crime proper, nor necessarily reached the point of no return in order for the act to be considered an attempt: <i>Attorney-General’s Reference (No.1 of 1992)</i>. <p>Explain an awareness of the Law Commission’s report which preceded the Criminal Attempts Act 1981 and describe some of the questions considered by the Report. Eg the desirability of striking a balance between the protection of the public from the social danger caused by the contemplation of the crime and the individual freedom to think or even fantasise about committing a crime.</p> <p>Explain that aspects of attempting the impossible may very well refer to the realistic and hypothetical absence of an <i>actus reus</i> of any sort unless defined by the accused’s belief. Refer to Sections 1</p>	16	<table border="1" data-bbox="1361 260 1742 491"> <thead> <tr> <th>AO1 Level</th> <th>AO1 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>14–16</td> </tr> <tr> <td>4</td> <td>11–13</td> </tr> <tr> <td>3</td> <td>8–10</td> </tr> <tr> <td>2</td> <td>5–7</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Level 5 Responses are unlikely to achieve Level 5 without discussing 8 linked cases, 6 of which are well developed. Responses will contain material from within the source materials and beyond.</p> <p>Level 4 Responses are unlikely to achieve Level 4 without including 6 linked cases, 4 of which are well developed.</p> <p>Level 3 Responses are unlikely to achieve Level 3 without including 4 linked cases, 2 of which will be well developed.</p> <p>Level 2 Responses are unlikely to achieve Level 2 without including 2 linked cases, 1 of which will be well developed.</p> <p>Level 1 Responses are not expected to discuss any cases.</p> <p>Responses will not be rewarded for an explanation on the <i>mens rea</i> and/or impossibility of Attempts unless they make a clear link in relation to the <i>actus reus</i> on Attempts. Those Responses which simply explain the <i>mens rea</i> and impossibility with no relationship to the <i>actus reus</i> will only be rewarded in the case count</p>	AO1 Level	AO1 marks	5	14–16	4	11–13	3	8–10	2	5–7	1	1–4
AO1 Level	AO1 marks														
5	14–16														
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Question	Answer	Marks	Guidance												
	<p>(2) and (3) as well as <i>Haughton v Smith</i>, <i>Anderton v Ryan</i> and <i>Shivpuri</i>. Explain, that since there must be ‘an act’, this excludes certain offences from being attempted eg a crime that can only be committed by omission. Nor can diminished responsibility or loss of control be a defence to attempted murder.</p>		<p>if the <i>mens rea</i> or impossibility case(s) explained are one's which have satisfied the <i>actus reus</i> of attempts eg <i>Whybrow</i> or <i>Shivpuri</i>.</p>												
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss the rationale of criminalising attempts through the <i>actus reus</i>. Discuss the historic confusion in the development of various common law tests on attempts pre-1981. Discuss, perhaps, some reference to ‘Proximity’, ‘Equivocality’ or ‘Last Act’ principles which may very well demonstrate the candidate’s true understanding of the topic. Older relevant cases discussed could include: <i>Robinson</i>, <i>Stonehouse</i> etc. Discuss the principle that a person ought not to be punished for merely contemplating the commission of an offence. Discuss the importance of the Criminal Attempts Act 1981 in codifying the law but which, perhaps, left questions unanswered. Discuss whether the fact that the decision in <i>Gullefer</i> reflects the wish expressed by the Law Commission that the point at which a course of conduct amounts to an offence is a matter of fact for the jury in each case; using principles of common sense and that the older common law principles would not need to be considered in order for a jury to come to a conclusion about this. Discuss the difficulties in deciding at which precise point, if any, an attempt can be said to have occurred eg the problems in <i>Gullefer</i>, <i>Geddes</i> etc. Discuss the Law Commission’s report which preceded the Criminal Attempts Act 1981 and discuss some of the questions considered by the Report. Discuss the appellate courts application of section 1(2) Criminal Attempts Act 1981 regarding attempting the impossible, relating the</p>	14	<table border="1" data-bbox="1366 454 1742 686"> <thead> <tr> <th>AO2 Level</th> <th>AO2 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>13–14</td> </tr> <tr> <td>4</td> <td>10–12</td> </tr> <tr> <td>3</td> <td>7–9</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>Level 5 Responses are unlikely to achieve level 5 without sophisticated analytical engagement with the question and very focused on the quote and provide a logical conclusion.</p> <p>Level 4 Responses are unlikely to achieve Level 4 without a good analytical engagement with the question and good focus on the quote and provide a logical conclusion.</p> <p>Level 3 Responses are unlikely to achieve level 3 without an adequate analytical engagement with the question and limited focused on the quote and provide a logical conclusion.</p> <p>Level 2 Responses are unlikely to achieve level 2 without limited analytical engagement with the question.</p>	AO2 Level	AO2 marks	5	13–14	4	10–12	3	7–9	2	4–6	1	1–3
AO2 Level	AO2 marks														
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Question	Answer	Marks	Guidance										
	<p>argument to <i>actus reus</i>. <i>Anderton v Ryan</i>, <i>Shivpuri</i>. Discuss, for example, any possible alternatives eg the US model of 'substantial steps strongly corroborative of the actor's criminal purpose'. Discuss whether it should be necessary, eg in the case of attempted murder, that the accused need go as far as pointing a gun at his or her intended victim? etc. Would this limit the power of the police to intervene? eg <i>Campbell</i>. Discuss any proposals for reform eg – the Law Commission's 2009 Report on Attempts. Reach any sensible conclusion</p>		<p>Responses will not achieve credit for any discussion on the <i>mens rea</i> or impossibility of Attempts unless they make clear links in relation to the <i>actus reus</i> on Attempts. Response which simply discusses the <i>mens rea</i> and/or impossibility with no relationship to the <i>actus reus</i> will not achieve credit.</p>										
	<p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</p>	4	<table border="1" style="width: 100%;"> <thead> <tr> <th data-bbox="1366 622 1675 654">AO1 + AO2 marks</th> <th data-bbox="1675 622 1843 654">AO3 mark</th> </tr> </thead> <tbody> <tr> <td data-bbox="1366 654 1675 686" style="text-align: center;">24 – 30</td> <td data-bbox="1675 654 1843 686" style="text-align: center;">4</td> </tr> <tr> <td data-bbox="1366 686 1675 718" style="text-align: center;">17 – 23</td> <td data-bbox="1675 686 1843 718" style="text-align: center;">3</td> </tr> <tr> <td data-bbox="1366 718 1675 750" style="text-align: center;">9 – 16</td> <td data-bbox="1675 718 1843 750" style="text-align: center;">2</td> </tr> <tr> <td data-bbox="1366 750 1675 782" style="text-align: center;">1 – 8</td> <td data-bbox="1675 750 1843 782" style="text-align: center;">1</td> </tr> </tbody> </table>	AO1 + AO2 marks	AO3 mark	24 – 30	4	17 – 23	3	9 – 16	2	1 – 8	1
AO1 + AO2 marks	AO3 mark												
24 – 30	4												
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9 – 16	2												
1 – 8	1												

Question	Answer	Marks	Guidance																														
3	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain the <i>actus reus</i> of an attempted crime under section 1(1) Criminal Attempts Act Explain that in order to convict the defendant the act must be more than merely preparatory to the commission of the offence Explain that more than merely preparatory means that the defendant must have gone beyond purely preparatory acts and have ‘embarked on the crime proper’, <i>Gullefer</i> Explain that the distinction between mere preparation and an attempted crime is determined by a jury considering ‘has the defendant done an act which shows that he has actually tried to commit the offence in question, or...has he only got ready or put himself in a position or equipped himself to do so’: <i>Geddes</i> Explain the relevant case(s) in the answer: • MP eg <i>Gullefer, Campbell, Geddes</i> etc. • MTMP eg <i>Jones, Boyle and Boyle</i> Explain the <i>mens rea</i> of an attempted crime under section 1(1) Criminal Attempts Act: an intent to commit the full offence and the meaning of intent has the same meaning as that under the common law <i>Mohan</i>; Explain that in cases involving attempted murder or attempted grievous bodily harm a higher level of <i>mens rea</i> is required. For attempted murder the defendant must intend to kill as an intent to cause grievous bodily harm is insufficient: <i>Whybrow</i> Explain section 1(2) and (3) Criminal Attempts Act 1988 – a person can be guilty of an attempted crime even though on the facts the commission of the offence is impossible <i>Shivpuri</i> Explain sections 1(2) and (3) Criminal Attempts Act 1988.</p>	10	<table border="1" data-bbox="1361 248 1832 459"> <thead> <tr> <th>Level</th> <th>AO1 marks</th> <th>AO2 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9–10</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>7–8</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>5–6</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>3–4</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–2</td> <td>1–4</td> </tr> </tbody> </table> <p>Marks should be awarded (per scenario) as follows:</p> <table border="1" data-bbox="1361 596 1697 807"> <thead> <tr> <th>Level</th> <th>(a), (b) or (c)</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9–10</td> </tr> <tr> <td>4</td> <td>7–8</td> </tr> <tr> <td>3</td> <td>5–6</td> </tr> <tr> <td>2</td> <td>3–4</td> </tr> <tr> <td>1</td> <td>1–2</td> </tr> </tbody> </table> <p>A maximum of 3 marks can be allocated for AO1 for each part question.</p> <ul style="list-style-type: none"> • Max 3 marks for the critical point (CP) • Max 6 marks for applied points (AP) • Max 1 mark for a logical conclusion/assessment of the most likely outcome in terms of liability (Con) <p>In order to reach level 5 responses must include a discussion of the Critical Point and in a relevant case.</p>	Level	AO1 marks	AO2 marks	5	9–10	17–20	4	7–8	13–16	3	5–6	9–12	2	3–4	5–8	1	1–2	1–4	Level	(a), (b) or (c)	5	9–10	4	7–8	3	5–6	2	3–4	1	1–2
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Question	Answer	Marks	Guidance
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>In the case of (a): CP1 Identify Arthur’s act is one capable of being ‘more than merely preparatory’ under section 1(1) Criminal Attempts Act using a relevant case, <i>Jones, Boyle and Boyle</i> AP1 Identify why Arthur’s act is ‘more than merely preparatory’ AP2 Identify why Arthur’s act may, although unlikely, be one ‘more than merely preparatory’ using a relevant case <i>Gullefer, Geddes, Campbell</i> etc AP3 Identify that Arthur’s intent was to commit the full offence (here possibly theft or robbery) – a proof of a decision to bring about the offence no matter whether the accused desired it or not – section 1(1) Criminal Attempts Act <i>Mohan</i> Conc – Reach any sensible conclusion.</p> <p>In the case of (b): CP1 Identify Charles’ act is one capable of being mere preparation and not under section 1(1) Criminal Attempts Act using a relevant case <i>Gullefer, Geddes, Campbell</i> etc AP1 Identify why Charles’s act is mere preparation AP2 Identify why Charles’ act may, although unlikely, be one which is ‘<i>more than merely preparatory</i>’ using a relevant case AP3 Identify that Charles’ intent was to commit the full offence (here possibly theft) – requiring proof of a decision to bring about the offence no matter whether the accused desired it or not – <i>Mohan</i> Conc – Reach any sensible conclusion.</p> <p>In the case of (c): CP1 Identify Harvinder’s intent was to commit the full offence (here murder) – a proof of a decision to bring about the offence no matter whether the accused desired it or not (<i>Mohan</i>). There must be an intent to kill, an intent to cause GBH is insufficient <i>Whybrow</i></p>	20	

Question	Answer	Marks	Guidance
	<p>AP1 Identify Harvinder's act is one capable of being more than merely preparatory – section 1(1) Criminal Attempts Act using a relevant case, <i>Jones, Boyle and Boyle</i> etc</p> <p>AP2 Identify why Harvinder's act is more than merely preparatory</p> <p>AP3 Identify why Harvinder's act may, although unlikely, to be one of mere preparation using a relevant case, <i>Campbell</i> etc</p> <p>AP4 Identify that Harvinder may still be liable since it is likely the offence is one of attempting the impossible – section 1(2), <i>Shivpuri</i>.</p> <p>Conc – Reach any sensible conclusion.</p>		

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 (<i>includes QWC</i>)
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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