

To be taken only between ... and ... 2012

A2 GCE LAW

G154/01: Criminal Law Special Study

Candidates answer on the Question Paper.

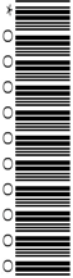
OCR Supplied Materials:

- Clean copy of the Special Study Materials

Duration: 1 hour 30 minutes

Other Materials Required:

None



Candidate Forename		Candidate Surname	
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Centre Number						Candidate Number				
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INSTRUCTIONS TO CANDIDATES

- Write your name, centre number and candidate number in the boxes above. Please write clearly and in capital letters.
- Use black ink. HB Pencil may be used for graphs and diagrams only.
- Answer **all** questions.
- Read each question carefully. Make sure you know what you have to do before starting your answer.
- You are reminded of the importance of including relevant knowledge from **all** areas of your course, where appropriate, including the English Legal System.
- Write your answer to each in the space provided. Additional paper may be used if necessary but you must clearly show your candidate number, centre number and question number(s).
- Do **not** write in bar codes.

INFORMATION FOR CANDIDATES

- The number of marks is given in brackets [] at the end of each question or part question.
- The total number of marks for this paper is **80**.
- Candidates are reminded of the need to write legibly and in continuous prose, where appropriate. In answering questions **1** and **2** you will be assessed on the quality of your written communication (QWC) including your use of appropriate legal terminology. These questions are marked with an asterisk (*).
- Candidates are reminded that they are able to use the information given in the sources to support their own knowledge and understanding, evaluation, analysis, and application of the law. Where candidate wish to extract from the source in this way they should use quotation marks or accurately cite lines of the source. Candidates who merely 'lift' information from the source materials without using it to support further knowledge, evaluation, analysis or application, will receive little or no credit. You are expected to demonstrate understanding of the area(s) of law and the development of law and to use legal methods and reasoning to analyse legal material, to select appropriate legal rules and apply these in order to draw conclusions.
- This document consists of **24** pages. Any blank pages are indicated.



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OXFORD CAMBRIDGE AND RSA EXAMINATIONS

Advanced GCE

LAW

[G154MS]

Unit G154: Criminal Law Special Study

Specimen Mark Scheme

The mark scheme must be read in conjunction with the Advanced GCE Law Assessment Grid.

When using the mark scheme the points made are merely those which 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. Reward grammar, spelling and punctuation.

Candidates are expected to demonstrate understanding of the area(s) of law and the development of law and to use legal methods and reasoning to analyse legal material, to select appropriate legal rules and apply these in order to draw conclusions.

This mark scheme contains indicative content but it is not exhaustive or prescriptive. It should be used alongside the matrix of levels of assessment and live exemplar standardisation scripts (which cover a range of responses identifying where within a level of assessment a particular response lies). Examiners are required to use the indicative content of the mark schemes only in conjunction with the matrix of levels of assessment as informed by actual responses in the standardisation scripts. Examiners should not be drawn prescriptively and quantitatively to the content of the mark scheme when marking candidates' responses and should follow the specific guidance provided by the Principal Examiner in terms of breadth and depth of responses. Appropriate credit will be given for non-standard answers.

Question Number	Answer	Max Mark																		
1	<p>Discuss the extent to which the precedent in <i>Re A (Conjoined Twins)</i> (Source 10 page 6 and Source 11 page 7 Special Study Materials) represents a development of the law on necessity.</p> <table border="0"> <thead> <tr> <th>Mark Levels</th> <th>AO2</th> <th>AO3</th> </tr> </thead> <tbody> <tr> <td>Level 5</td> <td>11-12</td> <td>-</td> </tr> <tr> <td>Level 4</td> <td>9-10</td> <td>4</td> </tr> <tr> <td>Level 3</td> <td>7-8</td> <td>3</td> </tr> <tr> <td>Level 2</td> <td>4-6</td> <td>2</td> </tr> <tr> <td>Level 1</td> <td>1-3</td> <td>1</td> </tr> </tbody> </table> <p>Potential answers MAY:</p> <p>Assessment Objective 2</p> <p>Define the principle arising from the case.</p> <p>Link to any leading case e.g. <i>R v Dudley and Stephens, Kitson</i>.</p> <p>Consider how the case confirms the existing definition of necessity:</p> <ul style="list-style-type: none"> • Necessity is a defence based on justification – the avoidance of a worse evil. • Necessity is a defence generally unavailable in criminal law and certainly not for murder. <p>Discuss how the case represents a development:</p> <ul style="list-style-type: none"> • CA decided that there were extreme situations where there could be a right to choose that one innocent person could die to save the life of another. • The application of the defence depends on three requirements: <ul style="list-style-type: none"> – Act needed to avoid a worse evil; – No more is done than is necessary for the purpose to be achieved; – In all the circumstances the evil inflicted is not disproportionate to the evil avoided. <p>Identify that the decision was by the Court of Appeal (Civil Division) so is not binding on the Criminal Division.</p> <p><i>Credit any reference to Lord Justice Walker's observation that the defence can only operate in unique circumstances and must therefore develop on a case by case basis.</i></p> <p>Assessment Objective 3</p> <p><i>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</i></p> <p><i>Reward grammar, spelling and punctuation.</i></p>	Mark Levels	AO2	AO3	Level 5	11-12	-	Level 4	9-10	4	Level 3	7-8	3	Level 2	4-6	2	Level 1	1-3	1	[16]
Mark Levels	AO2	AO3																		
Level 5	11-12	-																		
Level 4	9-10	4																		
Level 3	7-8	3																		
Level 2	4-6	2																		
Level 1	1-3	1																		

Question Number	Answer	Max Mark																								
2	<p>Lord Hailsham in <i>Howe</i> explains the defence of duress by saying that “in such circumstances a reasonable man of average courage is entitled to embrace as a matter of choice the alternative which a reasonable man could regard as the lesser of two evils.” (Source 2 page 2 lines 6-8 Special Study Materials).</p> <p>Consider the extent to which the development of the restrictions on the use of duress really allow ‘a reasonable man of average courage’ to exercise such a choice.</p> <table border="1" data-bbox="277 472 874 712"> <thead> <tr> <th>Mark Levels</th> <th>AO1</th> <th>AO2</th> <th>AO3</th> </tr> </thead> <tbody> <tr> <td>Level 5</td> <td>14-16</td> <td>13-14</td> <td>-</td> </tr> <tr> <td>Level 4</td> <td>11-13</td> <td>10-12</td> <td>4</td> </tr> <tr> <td>Level 3</td> <td>8-10</td> <td>7-9</td> <td>3</td> </tr> <tr> <td>Level 2</td> <td>5-7</td> <td>4-6</td> <td>2</td> </tr> <tr> <td>Level 1</td> <td>1-4</td> <td>1-3</td> <td>1</td> </tr> </tbody> </table> <p>Potential answers MAY:</p> <p>Assessment Objective 1</p> <p>Define the defence of duress and the two-part test in <i>Graham</i>:</p> <ul style="list-style-type: none"> • Defendant’s will was overborne by threat of imminent violence to self or close family – so defendant was impelled to act as he did. • Court is satisfied that a sober person of reasonable firmness would have been similarly affected by the threats and would have reacted in the same way. <p>Explain that the defendant escapes liability as a result of a successful defence having provided an acceptable excuse for his behaviour;</p> <p>Identify offences where the defence will be available and those where it will not e.g.:</p> <ul style="list-style-type: none"> • Generally available. • But not available to murder or secondary participation in murder <i>Howe</i>. • Nor to attempted murder <i>Gotts</i>, - though it would be available to S18 GBH. <p>Identify some obvious limitations e.g.</p> <ul style="list-style-type: none"> • Not available if self-induced <i>Shepherd</i>. • Not available if a means of escape exists <i>Hudson and Taylor</i>. • Not available if the threat is not immediate <i>Abdul Hussain</i>. • Not available if there is no nexus between the threat and the offence committed <i>Cole</i>. 	Mark Levels	AO1	AO2	AO3	Level 5	14-16	13-14	-	Level 4	11-13	10-12	4	Level 3	8-10	7-9	3	Level 2	5-7	4-6	2	Level 1	1-4	1-3	1	
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Level 2	5-7	4-6	2																							
Level 1	1-4	1-3	1																							

Question Number	Answer	Max Mark
<p>2 cont'd</p>	<p>Assessment Objective 2 Discuss some of the criticisms that can be made of the limitations e.g.:</p> <ul style="list-style-type: none"> • There can be circumstances where even a person of reasonable fortitude submits to threats, however repugnant what they are forced to do. • The effect of <i>Howe</i> may be to legally force a person into being a hero. • While a person may put his/her own life at risk to save someone else (s)he may not feel capable of applying the same test to his family. • There is an inconsistency with the defence of provocation. • Denying the defence to attempted murder but accepting it for S18 is anomalous since the harm suffered in the former might actually be less than that in the latter. <p>Consider the fairness of denying the defence if the threat is not immediate or if the person trying to use the defence has voluntarily associated with the person making it, since the impact on the person claiming the defence may still be very real.</p> <p>Consider the effect of self-induced defence (arguably limiting the restrictive nature of the defence) – and compare with <i>Bowen</i> – restrictive because IQ not relevant.</p> <p>Consider that the Law Commission has in any case suggested reforming the defence.</p> <p>Assessment Objective 3 <i>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</i> <i>Reward grammar, spelling and punctuation.</i></p>	<p>[34]</p>
<p>3</p> <p>3(a)</p> <p>3(b)</p>	<p>Mara, Ian and Claire are all students of Christine's in the law school where Christine works as a lecturer. Consider whether or not Christine would have a defence of duress available in each of the following situations.</p> <p>Mara, who has failed EU law, comes to Christine's room with a gun and threatens to kill Christine unless Christine goes directly to the EU lecturer's room and kills her with the knife that Mara gives her. Christine goes to the room, enters and attempts to kill the lecturer but she quickly holds a large book up in front of her preventing the knife from touching her.</p> <p>Ian comes to Christine's room and threatens that unless Christine immediately steals volumes of law reports for Ian from the research library that he will reveal to the Dean of School that Christine is having an affair with one of the third year students. Christine steals the law reports for Ian.</p>	

Question Number	Answer	Max Mark																								
<p>3(c)</p>	<p>Claire, who has failed all her first year modules, phones Christine from Spain during the vacation after hearing her results and threatens Christine that unless Christine burns down the law school she will kill her when she returns from Spain. Christine does set fire to the law school.</p> <table border="0"> <thead> <tr> <th>Mark Levels</th> <th>AO1</th> <th>AO2</th> <th>(for each of a, b, c)</th> </tr> </thead> <tbody> <tr> <td>Level 5</td> <td>9-10</td> <td>17-20</td> <td>9-10</td> </tr> <tr> <td>Level 4</td> <td>7-8</td> <td>13-16</td> <td>7-8</td> </tr> <tr> <td>Level 3</td> <td>5-6</td> <td>9-12</td> <td>5-6</td> </tr> <tr> <td>Level 2</td> <td>3-4</td> <td>5-8</td> <td>3-4</td> </tr> <tr> <td>Level 1</td> <td>1-2</td> <td>1-4</td> <td>1-2</td> </tr> </tbody> </table> <p><i>Candidates will not be credited for repeating information given in previous answers, but may refer to that knowledge in order to apply it appropriately.</i></p> <p>Potential answers MAY:</p> <p>Assessment Objective 1 Define duress. Use any relevant cases in illustration.</p> <p>Assessment Objective 2</p> <p>3(a)</p> <ul style="list-style-type: none"> • Apply the 2 part test from <i>Graham</i>. • Consider that the threat in this case is one of death or serious harm to Christine. • Consider also that on this basis the threat is one that is likely to produce the same response as Bert's in persons of reasonable fortitude. • Consider the rule in <i>Howe</i> that the defence is unavailable to a charge of murder and nor is it available to attempted murder <i>Gotts</i>. • Conclude on this basis that the defence would fail. <p>3(b)</p> <ul style="list-style-type: none"> • Apply the 2 part test from <i>Graham</i>. • Consider that the threat here is not one of immediate violence towards Christine although it may produce the same response in a person of reasonable fortitude. • Identify the similarity with <i>Valderrama-Vega</i>. • Consider that even the argument that Christine might suffer psychological harm would fail as it did in <i>Valderrama-Vega</i>. • Conclude that the defence would not be available. <p>Assessment Objective 2 (continued)</p> <p>3(c)</p> <ul style="list-style-type: none"> • Apply the 2 part test from <i>Graham</i>. • Consider that the threat is serious and may produce a similar effect in a person of reasonable fortitude. • Identify the similarity with <i>R v Hudson and Taylor</i> and conclude that Christine would have had ample opportunity to take alternative action to seek protection. • Consider also whether the threat can be seen as immediate <i>Abdul Hussain</i>. • Conclude that the defence is not available. 	Mark Levels	AO1	AO2	(for each of a, b, 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	<p>[10]</p> <p>[10]</p> <p>[10]</p>
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Paper Total		[80]																								

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 the 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.