



**SECTION A****The legal system**

Answer **two** questions (**one** from questions **1–2** and **one** from questions **3–4**).

Answer **one** question from questions **1–2**.

- 1** Explain arbitration as a form of Alternative Dispute Resolution. **[10]**
- 2** Describe the different forms of legal advice and assistance offered by the Legal Aid Agency to individuals in custody. **[10]**

Answer **one** question from questions **3–4**.

- 3** Discuss the advantages of using arbitration as a way of dealing with a civil dispute. **[15]**
- 4** Discuss the problems with government funding for criminal cases. **[15]**

**SECTION B****Criminal law**

Choose **Part 1** or **Part 2**.

**Part 1**

Answer the **three** questions below.

The first two questions are based on the scenarios below. The scenarios are **not** related.

Katya is speeding along a quiet road when she receives a text from her boyfriend. She replies as she drives along and does not notice an elderly runner, Peter, in front of her. Peter jumps out of the way and breaks his leg. Katya swerves to avoid Peter and drives away at speed. As she goes round a bend Katya loses control and the car skids, hitting Donald as he is walking his dog. Donald is unconscious and he and Peter are taken to hospital. Doctor Teal, who has been on duty for 18 hours, examines Donald and says he needs an urgent blood transfusion to save his life. Donald has a rare blood condition but Doctor Teal does not check for this. Donald is given the wrong blood and dies. Peter has a fear of hospitals and as his broken leg is being set he has a massive heart attack and dies.

Maria was engaged to Frank, a climber. Frank and his friend Gavin were climbing when Frank fell and died. Gavin survived and Maria believes he could have saved Frank. Maria is depressed and her doctor has prescribed medication. The doctor says she must only take one pill at a time and not drink alcohol. At a lunch in Frank's memory Maria is wearing a necklace he gave her. She hears Gavin say that Frank was a dangerous climber who got what he deserved. Maria is upset and takes a pill the doctor prescribed washed down with a glass of red wine. An hour later, Maria is drinking a glass of lemonade when Gavin comes and hugs her. She runs off and falls, breaking her necklace. Maria sees Gavin laugh. She grabs a sharp knife from the lunch table and stabs Gavin several times, killing him.

- 5** Advise whether Katya is liable for the unlawful act (constructive) manslaughter of Peter **and** whether Dr Teal is liable for the gross negligence manslaughter of Donald. [25]
- 6** Advise whether Maria can avoid liability for murder by using the defences of loss of control or diminished responsibility. [25]

**Essay question on criminal law**

- 7\*** 'The defence of intoxication is not fit for purpose and needs to be reformed urgently.'  
Discuss the extent to which this statement is accurate. [25]

**Part 2**

Answer the **three** questions below.

The first two questions are based on the scenarios below. The scenarios are **not** related.

Paula works as a cleaner for Omar, a rich businessman. When Omar is away on a business trip Paula sells a small sculpture in his house and keeps the money. After Omar returns home he tells Paula to take £500 from his wallet to buy a gift for a friend. Paula buys a gift for £400 and spends the other £100 on lottery scratch cards, winning £200. Paula spends most of this money on a pair of shoes. On the way home Paula buys a sandwich with her last £10 note. She is given change for a £50 note but says nothing and walks back to Omar's house.

Richard uses a lot of drugs and he owes money to his dealer. Richard and his friend, Steve, start stealing from tourists. They approach Kenji, who has a large camera hanging from a shoulder strap. Richard puts his fingers in his pocket to look like a gun and Steve pulls the camera. Kenji tries to hold on but Steve knocks him to the ground and runs off with the camera. Richard sells the camera but he still owes £200. Richard has a key to his father's flat and the next day he decides to sell his father's laptop to raise the money. Richard and Steve go to the flat but once inside they discover that the laptop is missing. Steve is angry and drinks a bottle of wine belonging to Richard's father.

**8** Advise whether Paula is criminally liable for theft. **[25]**

**9** Advise whether Richard and Steve are guilty of robbery and burglary. **[25]**

**Essay question on criminal law**

**10\*** 'The defence of intoxication is not fit for purpose and needs to be reformed urgently.'  
Discuss the extent to which this statement is accurate. **[25]**

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**...day June 20XX – Morning/Afternoon**

**A Level Law**

**H415/01 The legal system and criminal law**

**SAMPLE MARK SCHEME**

**Duration: 2 hours**

**MAXIMUM MARK 100**

SPECIMEN

**This document consists of 24 pages**

## SUBJECT-SPECIFIC MARKING INSTRUCTIONS

### Introduction

Your first task as an Examiner is to become thoroughly familiar with the material on which the examination depends. You should ensure that you have copies of these materials:

- the specification, especially the assessment objectives
- the question paper and its rubrics
- the mark scheme.

You should ensure also that you are familiar with the administrative procedures related to the marking process. These are set out in the OCR booklet **Instructions for Examiners**. If you are examining for the first time, please read carefully **Appendix 5 Introduction to Script Marking: Notes for New Examiners**. Please ask for help or guidance whenever you need it. Your first point of contact is your Team Leader.

### Information and instructions for examiners

The co-ordination scripts provide you with *examples* of the standard of each band. The marks awarded for these scripts will have been agreed by the Team Leaders and will be discussed fully at the Examiners' Co-ordination Meeting.

The specific task-related indicative content for each question will help you to understand how the band descriptors may be applied. However, this indicative content **does not** constitute the mark scheme: it is material that candidates **might** use, grouped according to each assessment objective tested by the question. It is hoped that candidates will respond to questions in a variety of ways. Rigid demands for 'what must be a good answer' would lead to a distorted assessment. Candidates' answers must be relevant to the question. Beware of prepared answers that do not show the candidate's thought and which have not been adapted to the thrust of the question. Beware also of answers where candidates attempt to reproduce interpretations and concepts that they have been taught but have only partially understood.

### Using the Mark Scheme

Please study this Mark Scheme carefully. The Mark Scheme is an integral part of the process that begins with the setting of the question paper and ends with the awarding of grades. Question papers and Mark Schemes are developed in association with each other so that issues of differentiation and positive achievement can be addressed from the very start.

This Mark Scheme is a working document; it is not exhaustive; it does not provide 'correct' answers. The Mark Scheme can only provide 'best guesses' about how the question will work out, and it is subject to revision after we have looked at a wide range of scripts.

The Examiners' Standardisation Meeting will ensure that the Mark Scheme covers the range of candidates' responses to the questions, and that all Examiners understand and apply the Mark Scheme in the same way. The Mark Scheme will be discussed and amended at the meeting, and administrative procedures will be confirmed. Co-ordination scripts will be issued at the meeting to exemplify aspects of candidates' responses and achievements; the co-ordination scripts then become part of this Mark Scheme.

Before the Standardisation Meeting, you should read and mark in pencil a number of scripts, in order to gain an impression of the range of responses and achievement that may be expected.

Please read carefully all the scripts in your allocation and make every effort to look positively for achievement throughout the ability range. Always be prepared to use the full range of marks.

### Assessment Objectives

**Three** Assessment Objectives are being assessed across the questions: **AO1**: Demonstrate knowledge and understanding of the English legal system and legal rules and principles, **AO2**: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology, **AO3**: Analyse and evaluate legal rules, principles, concepts and issues.

For **AO2**, there are two elements to the assessment objective:

- Apply legal rules and principles to given scenarios
- Present a legal argument using appropriate legal terminology

These two elements should have equal weighting and be awarded jointly according to the guidance given in the level descriptors and indicative content. For example, to achieve level 4, an answer should include excellent application of legal rules and principles and excellent presentation of legal argument. Further guidance will be given in the standardisation meeting when there is an uneven performance across the elements.

### Levels of Response

Questions in this paper are marked using a levels of response grid. When using this grid, examiners must use a **best-fit** approach. Where there are both strengths and weaknesses in a particular response, particularly imbalanced responses in terms of the assessment objectives, examiners must carefully consider which level is the best fit for the performance. Note that candidates can achieve different levels in each assessment objective, for example a Level 3 for AO1, and a Level 2 for AO2.

To use these grids:

**Determine the level:** start at the highest level and work down until you reach the level that matches the answer.

**Determine the mark within the level:** consider the following:

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Just enough achievement on balance for this level	Above bottom and either below middle or at middle of level (depending on number of marks available)
Meets the criteria but with some slight inconsistency	Above middle and either below top of level or at middle of level (depending on number of marks available)
Consistently meets the criteria for this level	At top of level

**ASSESSMENT OBJECTIVES: BREAKDOWN BY QUESTION****Section A**

Questions 1–2

Assessment Objectives:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. <b>10 marks.</b>
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Questions 3–4

Assessment Objectives:	AO3 1b: Analyse and evaluate legal concepts and issues. <b>15 marks.</b>
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**Section B**

Questions 5, 6, 8 and 9

Assessment Objectives:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. <b>10 marks.</b>  AO2 1a/1b: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. <b>15 marks.</b>
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Questions 7\* and 10\*

Assessment Objectives:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. <b>10 marks.</b>  AO3 1a: Analyse and evaluate legal rules and principles. <b>15 marks.</b>
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Questions that have an asterisk (\*) assess the quality of a candidate's extended response. Levels descriptors are identified in the AO3 column in italics.

SPECIMEN

## Section A

	Answer	Marks	Guidance
1	<p><i>Describe arbitration as a form of Alternative Dispute Resolution.</i></p> <p>Answers <b>may</b> include:</p> <ul style="list-style-type: none"> <li>• Arbitration – both parties voluntarily agree to let their dispute be left to the judgment of an arbitrator or a panel of arbitrators who are neutral</li> <li>• Agreements to arbitrate are governed by the Arbitration Act 1996 and are usually in writing. Agreement to go to arbitration can be made before a dispute arises [usually by a <i>Scott v Avery</i> clause in a contract]. Agreement will either name an arbitrator or provide a method for choosing one. A court may also appoint an arbitrator. The parties agree the procedure for hearings and this ranges from a ‘paper’ arbitration to a formal court-like hearing</li> <li>• Arbitration awards are binding on the parties and can be enforced by the courts if necessary. An award by an arbitrator can be challenged in the courts for serious irregularity in the proceedings or on a point of law. Illustrations of situations where arbitration is used include building contracts, holiday contracts and as a result of various other business contracts.</li> </ul> <p>Credit any other relevant point(s).</p>	<p><b>10</b> <b>AO1</b></p>	<p><b>Use Levels of Response criteria</b></p> <p><b>Level 4 (9–10 marks)</b> Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed.</p> <p><b>Level 3 (6–8 marks)</b> Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places.</p> <p><b>Level 2 (3–5 marks)</b> Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed.</p> <p><b>Level 1 (1–2 marks)</b> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail.</p> <p><b>Level 0 (0 marks)</b> No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
2	<p><i>Describe the different forms of legal advice and assistance offered by the Legal Aid Agency to individuals in custody.</i></p> <p>Answers <b>may</b> include:</p> <ul style="list-style-type: none"> <li>• Since 2013 criminal legal aid services have been under the jurisdiction of the Legal Aid Agency</li> <li>• The Director of Legal Aid Casework supervises criminal legal aid.</li> <li>• Agency makes contracts with law firms to provide legal services to people charged with criminal offences</li> <li>• Under s13 Legal Aid, Sentencing and Punishment of Offenders Act initial advice and initial assistance will be available to individuals detained at a police station or other premises and the Director has determined that the individual qualifies for such advice and assistance</li> <li>• The Director must have regards to the interests of justice in making that determination</li> <li>• Advice is provided by duty solicitors – telephone advice is preferred to the solicitor attending the police station</li> <li>• Since 2004, solicitors can only claim for attending at the police station if they can show that attendance was expected to ‘materially progress the case’.</li> </ul> <p>Credit any other relevant point(s).</p>	<p><b>10</b> <b>AO1</b></p>	<p><b>Use Levels of Response criteria</b></p> <p><b>Level 4 (9–10 marks)</b> Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes.</p> <p><b>Level 3 (6–8 marks)</b> Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes.</p> <p><b>Level 2 (3–5 marks)</b> Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes.</p> <p><b>Level 1 (1–2 marks)</b> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of relevant statutes is limited.</p> <p><b>Level 0 (0 marks)</b> No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
3	<p><i>Discuss the advantages of using arbitration as a way of dealing with a civil dispute.</i></p> <p>Candidates <b>may</b> develop the following points. Marks will be awarded on the basis of the quality of analysis and evaluation, given in the levels of response criteria in the guidance column.</p> <ul style="list-style-type: none"> <li>• The parties can choose their arbitrator and appoint a technical expert, if appropriate, as the use of an expert to decide saves the necessity for expert witnesses</li> <li>• The time and place of the hearing can be decided by the parties to suit their needs and working commitments, unlike court where such control by the parties is not possible</li> <li>• Hearings are held in private saving the publicity of court and bad feeling is more likely to be avoided between the parties</li> <li>• Cases are likely to be dealt with more quickly than in the courts</li> <li>• Tends to be cheaper than court</li> <li>• Award is final and can be enforced by the courts.</li> </ul> <p>Credit any other relevant point(s).</p>	<p><b>15</b> <b>AO3</b> <b>1b</b></p>	<p><b>Use Levels of Response criteria</b></p> <p><b>Level 4 (12–15 marks)</b> Excellent analysis and evaluation of a wide range of legal concepts and issues. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed.</p> <p><b>Level 3 (8–11 marks)</b> Good analysis and evaluation of a range of legal concepts and issues. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed.</p> <p><b>Level 2 (4–7 marks)</b> Basic analysis and evaluation of legal concepts and issues. The response is partially focused on the question. Some of the key points are discussed and partially developed.</p> <p><b>Level 1 (1–3 marks)</b> Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal.</p> <p><b>Level 0 (0 marks)</b> No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
4	<p><i>Discuss the problems with government funding for criminal cases.</i></p> <p>Candidates <b>may</b> develop the following points. Marks will be awarded on the basis of the quality of analysis and evaluation, given in the levels of response criteria in the guidance column.</p> <ul style="list-style-type: none"> <li>• Strict application of ‘interests of justice’ test. There has to be a real risk of imprisonment. A defendant with more convictions is more likely to be imprisoned; therefore, they are more likely to receive help. Defendant who is less likely to go to prison is less likely to receive legal aid.</li> <li>• In the Magistrates’ Court there is a strict means test. The levels of income allowed are low. About three quarters of adults do not qualify for legal aid. In Crown Courts, there are less severe limits but cases are more serious and more expensive to defend a case - risk of injustice.</li> <li>• Lack of lawyers - fewer solicitors are taking on this work now. Significant drop in law firms doing criminal legal aid work, in 1990s there were over 5000 firms, by 2012 there were fewer than 2000 firms.</li> <li>• Budget - budget for legal funding has not risen in line with inflation.</li> </ul> <p>Credit any other relevant point(s).</p>	<p><b>15</b> <b>AO3</b> <b>1b</b></p>	<p><b>Use Levels of Response criteria</b></p> <p><b>Level 4 (12–15 marks)</b> Excellent analysis and evaluation of a wide range of legal concepts and issues. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed.</p> <p><b>Level 3 (8–11 marks)</b> Good analysis and evaluation of a range of legal concepts and issues. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed.</p> <p><b>Level 2 (4–7 marks)</b> Basic analysis and evaluation of legal concepts and issues. The response is partially focused on the question. Some of the key points are discussed and partially developed.</p> <p><b>Level 1 (1–3 marks)</b> Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal.</p> <p><b>Level 0 (0 marks)</b> No response or no response worthy of credit.</p>

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Mark scheme continued on page 10.

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## Section B

- 5 Advise whether Katya is liable for the unlawful act (constructive) manslaughter of Peter **and** whether Dr Teal is liable for the gross negligence manslaughter of Donald.

<b>Assessment Objectives</b>	<p><b>AO1:</b> Demonstrate knowledge and understanding of the English legal system and legal rules and principles. <b>10 marks.</b></p> <p><b>AO2:</b> Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. <b>15 marks.</b></p>
<b>Additional guidance</b>	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

**AO1 Indicative content**

Answers may:

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 with the necessary mens rea – *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 – *Church*.

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 chain of causation:

- Causation in fact – defendant 'but for' cause and makes more than a minimal contribution to death of victim – *White, Kimsey*
- Causation in law – defendant's act to be operative and substantial cause of harm – *Pagett, Church*
- Need to 'take your victim as you find them' – *Blaue*
- Credit reasonable alternative points and cases.

Credit any other relevant point(s).

**AO2 Indicative content**

Answers may include the following:

In the case of Katya and Peter:

- There is an unlawful criminal act as Katya is speeding or driving dangerously or using her mobile phone whilst driving
- Katya's criminal act was done with the required mens rea
- A reasonable man would see a risk of at least some harm from a driver not concentrating fully
- Katya is the factual and legal cause of death; Peter must be taken as he is found
- Offence of unlawful act (constructive) manslaughter is complete

In the case of Dr Teal and Donald:

- Dr Teal owes a duty of care to Donald
- That duty is breached when Dr Teal does not check Donald's blood
- There is a risk of death and death is caused
- Dr Teal's failure to check Donald's blood will probably not be grossly negligent as his lapse is due to a long shift
- No offence of gross negligence manslaughter

**OR**

- Dr Teal's failure to check Donald's blood will probably be grossly negligent as it is a basic element of a blood transfusion
- Dr Teal will be liable for the gross negligence manslaughter of Donald

Candidates will be credited for either conclusion with regard to Dr Teal as long as their reasoning is clear and logical.

Credit any other relevant point(s).

	<b>AO1</b>	<b>Mark</b>	<b>AO2 1a/1b</b>	<b>Mark</b>
<b>Level 4</b>	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law.	<b>9–10</b>	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	<b>12–15</b>
<b>Level 3</b>	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law.	<b>6–8</b>	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	<b>8–11</b>
<b>Level 2</b>	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to case law.	<b>3–5</b>	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.	<b>4–7</b>
<b>Level 1</b>	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	<b>1–2</b>	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	<b>1–3</b>
<b>Level 0</b>	No response or no response worthy of credit.	<b>0</b>	No response or no response worthy of credit.	<b>0</b>

6 Advise whether Maria can avoid liability for murder by using the defences of loss of control or diminished responsibility.

<b>Assessment Objectives</b>	<p><b>AO1:</b> Demonstrate knowledge and understanding of the English legal system and legal rules and principles. <b>10 marks.</b></p> <p><b>AO2:</b> Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. <b>15 marks.</b></p>
<b>Additional guidance</b>	<p>The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.</p>

### AO1 Indicative content

Answers may:

Define and explain voluntary manslaughter – Coroners and Justice Act 2009 defences.

Define and explain defence of loss of self-control s54 and s55 Coroners and Justice Act 2009.

Define and explain defence of diminished responsibility as amended by s52 Coroners and Justice Act 2009:

- Must be an abnormality of mental functioning – *Byrne*
- Defendant to have a recognised medical condition – *Dietschmann, Jama, Seers*
- Defendant to be substantially impaired and unable to: understand the nature of their act, or form a rational judgment or exercise self-control
- Abnormality to provide explanation for defendant's acts and omissions – must be causal link but need not be the only one
- Credit reasonable alternative points and cases.

Credit any other relevant point(s).

### AO2 Indicative content

Answers may include:

In the case of defence of loss of self-control:

- Been an act as Maria hears what Gavin says about Frank and he laughs when she falls
- Loss of self-control can be linked to Gavin's words or damaged property
- Gavin's words may be a qualifying trigger if he intended Maria to hear, as could the broken necklace

- Maria's act of running away seems reasonable based on what she believes about Gavin
- Reach a reasoned conclusion.

In the case of defence of diminished responsibility:

- Maria taking prescribed pills for depression suggests abnormality of mental function
- Depression is a recognised medical condition
- Hearing Gavin's words and when he laughs at her may substantially impair Maria's ability to understand the nature of conduct, or form a rational judgment, or exercise self-control
- Maria's mental state and Gavin's actions provide an explanation for her act.
- Reach a reasoned conclusion.

Credit any other relevant point(s).

	<b>AO1</b>	<b>Mark</b>	<b>AO2 1a/1b</b>	<b>Mark</b>
<b>Level 4</b>	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	<b>9–10</b>	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	<b>12–15</b>
<b>Level 3</b>	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	<b>6–8</b>	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	<b>8–11</b>
<b>Level 2</b>	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	<b>3–5</b>	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.	<b>4–7</b>
<b>Level 1</b>	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.	<b>1–2</b>	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	<b>1–3</b>
<b>Level 0</b>	No response or no response worthy of credit.	<b>0</b>	No response or no response worthy of credit.	<b>0</b>

7\* 'The defence of intoxication is not fit for purpose and needs to be reformed urgently'.

<b>Assessment Objectives</b>	<b>AO1:</b> Demonstrate knowledge and understanding of the English legal system and legal rules and principles. <b>10 marks.</b> <b>AO3 1a:</b> Analyse and evaluate legal rules and principles. <b>15 marks.</b>
<b>Additional guidance</b>	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

### AO1 Indicative content

Discuss the extent to which this statement is accurate.

Answers **may**:

Define common law defence – inability to form *mens rea* due to alcohol, drugs or other substances – *Sheehan and Moore, Kingston, Heard*

Explain that judge decides if there is evidence of intoxication to go to jury – *Groark*

Explain voluntary intoxication:

- Can negate *mens rea* for specific intent offences – *Beard, Sheehan and Moore, Lipman*
- Excepting theft at best only a partial defence
- Does not work if intoxication due to 'Dutch courage' – *Gallagher*
- No defence to crimes of basic intent – *Majewski, Richardson and Irwin.*

Explain involuntary intoxication:

- Complete defence
- Can apply when prescribed medication is taken as directed and has an unpredictable effect – *Majewski, Bailey, Hardie*
- Can apply where defendant does not know they are taking an intoxicating substance, as in laced drinks; no defence if any awareness of intoxication – *Allen, Kingston.*

Explain the link between intoxication and mistake

- Rarely a defence – *Lipman, O'Grady, Hatton, Fotheringham*, s76 Criminal Justice and Immigration Act 2008
- Exception in s5 Criminal Damage Act 1971 – *Jaggard v Dickinson.*

Reference to Criminal Law theory and theories of criminal justice and punishment, including retribution, deterrence, incapacitation, rehabilitation and reparation.

Credit any other relevant point(s).

### AO3 Indicative content

Answers **may**:

Discuss any or all of the following areas:

- Distinction between voluntary and involuntary can be unclear
- All intoxicating substances are treated similarly whether legal or illegal
- No account taken of impact on an individual
- Focus on end result – problem of coincidence

<ul style="list-style-type: none"> <li>• Distinction between specific and basic intent can change – problem of fall-back</li> <li>• Public policy to criminalise drink/drugs but no distinction between types of offender</li> <li>• Hard to balance personal responsibility with public protection.</li> </ul> <p>Reform proposals:</p> <ul style="list-style-type: none"> <li>• Butler Committee 1975 – offence of ‘dangerous intoxication’ rejected</li> <li>• Law Commission 1993 – defence of voluntary intoxication to all crimes; 1995 recommended codifying existing law and in Offences Against the Person Bill 1998 – not enacted</li> <li>• Law Commission 2009 – Intoxication and Criminal Liability – remove specific/basic intent divide, retain voluntary/involuntary intoxication distinction. Presumption that no intoxication but if evidence exists then intoxication presumed to be voluntary. Would be defence if offence required integral fault element such as intention, belief or dishonesty but no defence otherwise.</li> </ul> <p>Other wider issues:</p> <ul style="list-style-type: none"> <li>• Financial arguments – cost to NHS and anti-social behaviour resulting from people using alcohol balanced against tax revenue</li> <li>• Problems of creating an effective law for those who are intoxicated due to drugs, especially for driving.</li> </ul> <p>Link made to criminal law theory and theories of criminal justice and punishment relevant to the question.</p> <p>Reach any sensible conclusion.</p> <p>Credit any other relevant point(s).</p>
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	AO1	Mark	AO3 1a	Mark
<b>Level 4</b>	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	<b>9–10</b>	Excellent analysis and evaluation of a wide range of legal rules and principles. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion. <i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i>	<b>12–15</b>
<b>Level 3</b>	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	<b>6–8</b>	Good analysis and evaluation of a range of legal rules and principles. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion. <i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i>	<b>8–11</b>
<b>Level 2</b>	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	<b>3–5</b>	Basic analysis and evaluation of legal rules and principles. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion. <i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i>	<b>4–7</b>
<b>Level 1</b>	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.	<b>1–2</b>	Limited analysis of legal rules and principles. The response has limited focus on the question. Discussion of any key points is minimal. <i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i>	<b>1–3</b>
<b>Level 0</b>	No response or no response worthy of credit.	<b>0</b>	No response or no response worthy of credit.	<b>0</b>

8 Advise whether Paula is criminally liable for theft.

<b>Assessment Objectives</b>	<b>AO1:</b> Demonstrate knowledge and understanding of the English legal system and legal rules and principles. <b>10 marks.</b> <b>AO2:</b> Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. <b>15 marks.</b>
<b>Additional guidance</b>	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

### AO1 Indicative content

Answers may:

Define and explain theft – charged under Theft Act 1968:

- Section 1 – dishonest appropriation of property belonging to another with intention to deprive other of it
- Section 3 – appropriation – any assumption of any of rights of owner with or without consent – *McPherson, Lawrence, Morris, Gomez*
- Section 4 – property – can be tangible or intangible
- Section 5 – belonging to another – ownership, possession or control – *Turner*
- Section 2 – dishonesty – 2(1)(a) – defendant not dishonest if honestly believe they have legal right to property, 2(1)(b) – defendant not dishonest if honestly believe owner would consent – *Holden*, 2(1)(c) – defendant not dishonest if honestly believe owner cannot be found having taken reasonable steps – *Small*; if none of above apply the jury apply common sense view or *Ghosh* – was defendant dishonest by standards of reasonable man and, if so, did defendant know dishonest by that standard?
- Section 6 – intention to permanently deprive – to take forever or for period equivalent to outright taking – *Lloyd*.

Credit any other relevant point(s).

### AO2 Indicative content

Answers may:

In the case of Paula selling Omar's sculpture:

- *Actus reus* exists as she treats sculpture as her own
- *Mens rea* exists as she sells it when Omar is away and keeps money.

In the case of Paula buying the scratch cards:

- *Actus reus* exists as covered by s5(3)
- *Mens rea* exists as Paula is given money to buy gift but may argue s2(1)(b).

In the case of the change:

- *Actus reus* covered by s5(4)
- *Mens rea* exists as Paula realises what has happened and says nothing.

Reach a reasoned conclusion in each instance.

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
<b>Level 4</b>	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	<b>9–10</b>	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	<b>12–15</b>
<b>Level 3</b>	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	<b>6–8</b>	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	<b>8–11</b>
<b>Level 2</b>	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	<b>3–5</b>	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.	<b>4–7</b>
<b>Level 1</b>	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.	<b>1–2</b>	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	<b>1–3</b>
<b>Level 0</b>	No response or no response worthy of credit.	<b>0</b>	No response or no response worthy of credit.	<b>0</b>

9 Advise whether Richard and Steve are guilty of robbery and burglary.

<b>Assessment Objectives</b>	<b>AO1:</b> Demonstrate knowledge and understanding of the English legal system and legal rules and principles. <b>10 marks.</b> <b>AO2:</b> Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. <b>15 marks.</b>
<b>Additional guidance</b>	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

#### AO1 Indicative content

Answers **may**:

Define and explain robbery – section 8 Theft Act 1968:

- *Actus reus* – theft accompanied by use or threat of force before or at time of stealing and in order to steal – *Dawson and James, Hale, Lockley*
- *Mens rea* – intention to steal and intention or recklessness as to force – *Robinson*
- Offence committed at the time the theft is complete – *Corcoran and Anderton*.

Define and explain burglary – section 9 Theft Act 1968:

- Section 9(1)(a) – entry of a building or part of a building as a trespasser with the intention to steal, inflict GBH or cause unlawful damage
- Section 9(1)(b) – having entered as a trespasser the defendant commits or attempts to commit theft or GBH
- Entry – *Collins, Brown, Ryan*
- Building or part of a building – *Walkington*
- Trespasser – *Jones and Smith*.

Credit any other relevant point(s).

#### AO2 Indicative content

Answers **may** include:

In the case of Kenji's camera:

- Richard seeks to put Kenji in fear of force by making his fingers look like a gun
- This happens deliberately
- There is a theft as Steve gets the camera and intends to do so
- The force used by Steve will be seen as a continuing act.

In the case of the laptop:

- Richard must enter a building or part of a building and he has entered his father's flat
- He must enter as a trespasser and his father would not give consent if he knew Richard intended to steal the laptop
- An intention to steal provides *mens rea* for s9(1)(a)
- The offence is complete on entry so it does not matter that the laptop is missing.

In the case of the wine:

- Steve must enter a building or part of a building as a trespasser and he has not been asked to look after the flat
- As Steve has not been invited into the flat by Richard's father he is subjectively reckless as to being a trespasser
- When Steve drinks the wine this is theft under s9(1)(b).

Reach a reasoned conclusion in each instance.

Credit any other relevant point(s).

	<b>AO1</b>	<b>Mark</b>	<b>AO2 1a/1b</b>	<b>Mark</b>
<b>Level 4</b>	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	<b>9–10</b>	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	<b>12–15</b>
<b>Level 3</b>	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	<b>6–8</b>	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	<b>8–11</b>
<b>Level 2</b>	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	<b>3–5</b>	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.	<b>4–7</b>
<b>Level 1</b>	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.	<b>1–2</b>	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	<b>1–3</b>
<b>Level 0</b>	No response or no response worthy of credit.	<b>0</b>	No response or no response worthy of credit.	<b>0</b>

10\* 'The defence of intoxication is not fit for purpose and needs to be reformed urgently'.

<b>Assessment Objectives</b>	<b>AO1:</b> Demonstrate knowledge and understanding of the English legal system and legal rules and principles. <b>10 marks.</b> <b>AO3 1a:</b> Analyse and evaluate legal rules and principles. <b>15 marks.</b>
<b>Additional guidance</b>	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

#### AO1 Indicative content

Discuss the extent to which this statement is accurate.

Answers **may**:

Define common law defence – inability to form *mens rea* due to alcohol, drugs or other substances – *Sheehan and Moore, Kingston, Heard*.

Explain that judge decides if there is evidence of intoxication to go to jury – *Groark*.

Explain voluntary intoxication:

- Can negate *mens rea* for specific intent offences – *Beard, Sheehan and Moore, Lipman*
- Excepting theft at best only a partial defence
- Does not work if intoxication due to 'Dutch courage' – *Gallagher*
- No defence to crimes of basic intent – *Majewski, Richardson and Irwin*.

Explain involuntary intoxication:

- Complete defence
- Can apply when prescribed medication is taken as directed and has an unpredictable effect – *Majewski, Bailey, Hardie*
- Can apply where defendant does not know they are taking an intoxicating substance, as in laced drinks; no defence if any awareness of intoxication – *Allen, Kingston*

Explain the link between intoxication and mistake

- Rarely a defence – *Lipman, O'Grady, Hatton, Fotheringham*, s76 Criminal Justice and Immigration Act 2008
- Exception in s5 Criminal Damage Act 1971 – *Jaggard v Dickinson*.

Reference to Criminal Law theory and theories of criminal justice and punishment, including retribution, deterrence, incapacitation, rehabilitation and reparation.

Credit any other relevant point(s).

#### AO3 Indicative content

Answers **may**:

Discuss any or all of the following areas:

- Distinction between voluntary and involuntary can be unclear
- All intoxicating substances are treated similarly whether legal or illegal
- No account taken of impact on an individual
- Focus on end result – problem of coincidence

<ul style="list-style-type: none"> <li>• Distinction between specific and basic intent can change – problem of fall-back</li> <li>• Public policy to criminalise drink/drugs but no distinction between types of offender</li> <li>• Hard to balance personal responsibility with public protection.</li> </ul> <p>Reform proposals:</p> <ul style="list-style-type: none"> <li>• Butler Committee 1975 – offence of ‘dangerous intoxication’ rejected</li> <li>• Law Commission 1993 – defence of voluntary intoxication to all crimes; 1995 recommended codifying existing law and in Offences Against the Person Bill 1998 – not enacted</li> <li>• Law Commission 2009 – Intoxication and Criminal Liability – remove specific/basic intent divide, retain voluntary/involuntary intoxication distinction. Presumption that no intoxication but if evidence exists then intoxication presumed to be voluntary. Would be defence if offence required integral fault element such as intention, belief or dishonesty but no defence otherwise.</li> </ul> <p>Other wider issues:</p> <ul style="list-style-type: none"> <li>• Financial arguments – cost to NHS and anti-social behaviour resulting from people using alcohol balanced against tax revenue</li> <li>• Problems of creating an effective law for those who are intoxicated due to drugs, especially for driving.</li> </ul> <p>Link made to criminal law theory and theories of criminal justice and punishment relevant to the question.</p> <p>Reach any sensible conclusion.</p> <p>Credit any other relevant point(s).</p>
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	AO1	Mark	AO3 1a	Mark
<b>Level 4</b>	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	<b>9–10</b>	Excellent analysis and evaluation of a wide range of legal rules and principles. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion. <i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i>	<b>12–15</b>
<b>Level 3</b>	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	<b>6–8</b>	Good analysis and evaluation of a range of legal rules and principles. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion. <i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i>	<b>8–11</b>
<b>Level 2</b>	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	<b>3–5</b>	Basic analysis and evaluation of legal rules and principles. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion. <i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i>	<b>4–7</b>
<b>Level 1</b>	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.	<b>1–2</b>	Limited analysis of legal rules and principles. The response has limited focus on the question. Discussion of any key points is minimal. <i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i>	<b>1–3</b>
<b>Level 0</b>	No response or no response worthy of credit.	<b>0</b>	No response or no response worthy of credit.	<b>0</b>

## Assessment Objectives Grid

Questions	AO1	AO2 1a/1b**	AO3 1a	AO3 1b	Total
1–2	10	0	0	0	10
3–4	0	0	0	15	15
5 or 8	10	15	0	0	25
6 or 9	10	15	0	0	25
7* or 10*	10	0	15	0	25
<b>Total</b>	<b>40</b>	<b>30</b>	<b>15</b>	<b>15</b>	<b>100</b>

\*\*AO2 elements 1a and 1b will be awarded jointly

**Summary of updates**

Date	Version	Change
June 2019	4.3	'Including any defences they may raise' has been removed from question 9 on pages 4 and 19.

SPECIMEN