Qualification Accredited

Oxford Cambridge and RSA

# A LEVEL

*Exemplar Candidate Work*

# *LAW*

**H415**
For first teaching in 2015

# H415/01 Summer 2019 examination series

Version 1

# Contents

# Introduction

These exemplar answers have been chosen from the summer 2019 examination series.

OCR is open to a wide variety of approaches and all answers are considered on their merits. These exemplars, therefore, should not be seen as the only way to answer questions but they do illustrate how the mark scheme has been applied.

Please always refer to the specification https://www.ocr.org.uk/Images/315216-specification-accredited-a-level-gce-law-h415.pdf for full details of the assessment for this qualification. These exemplar answers should also be read in conjunction with the sample assessment materials and the June 2019 Examiners' report or Report to Centres available from Interchange https://interchange.ocr.org.uk/.

The question paper, mark scheme and any resource booklet(s) will be available on the OCR website from summer 2020. Until then, they are available on OCR Interchange (school exams officers will have a login for this and are able to set up teachers with specific logins – see the following link for further information http://www.ocr.org.uk/administration/support-and-tools/interchange/managing-user-accounts/).

It is important to note that approaches to question setting and marking will remain consistent. At the same time OCR reviews all its qualifications annually and may make small adjustments to improve the performance of its assessments. We will let you know of any substantive changes.

# Question 1

**1** Explain the five main aims of sentencing. **[10]**

## Exemplar 1 — 9 marks

**Extract 1**

| | | |
|---|---|---|
| 1 | a | The five main aims of Sentencing are |
| | | outlined in the Criminal Justice Act 2003. |
| | | The Sentences aims are what the judiciary |
| | | uses in order to & achieve with |
| | | a sentence. |

**Extract 2**

| | | |
|---|---|---|
| | | The next is Rehabilitation which seeks to |
| | | reform the defendant behaviour. This means |
| | | they are able to be reintegrated back |
| | | into Society. An example of this is |
| | | counselling for ADHD or drug rehab. |

## Examiner commentary

The extracts above are from a Level 4 response, demonstrating excellent knowledge and understanding of the aims of sentencing. The candidate begins by accurately acknowledging that the aims are set out in the Criminal Justice Act 2003. The use of fully relevant statute(s) and/or case(s) is stated in the Response Criteria. There is limited opportunity to cite statutes/cases in this topic and therefore to achieve full marks, statutory reference was required.

The second extract illustrates the candidate demonstrating good understanding of one of the five aims. The candidate has taken a broad approach by providing the name of the aim, giving a short description and an example to illustrate.

## Exemplar 2 — 6 marks

| | | |
|---|---|---|
| 1 | A | The 5 main aims of sentencing are retribution |
| | | – where the judge seeks to impose a punishment |
| | | on the offender that is equal to the crime committed, |
| | | rehabilitation; this is especially used for young offen- |
| | | ders, where the judge aims to rehabilitate the offender back |
| | | into society, ~~for~~ denunciation, where, through the retributi |
| | | -on the judge ~~sets~~ reinforces a moral standard for society by condemning |
| | | the offenders actions, incarceration, where the judge aims to |
| | | protect the public by making sure the offender cannot come |
| | | into contact with the public (usually by sending them to prison), |

and finally, deterrence, where the punishment given to the individual deters the offender from re-offending, or through ~~a threat~~ deterring ~~given to~~ a group of people from offending the punishment of one person. The main aims of sentencing are set out in ~~S~~ S.142 of the Criminal Justice Act 1988...

# Examiner commentary

The candidate sets out four of the five aims of sentencing in this response. As the question specifically required an explanation of the five aims of sentencing, all five were required for Level 4.

The candidate names some aims and gives differing amount of detail for each. Candidates are awarded marks by either giving a broad range with less detail or a narrow range with lots of details. Further development of the aims and the inclusion of reparation would have moved this response into Level 4. There are illustrations for rehabilitation and protection of the public.

The candidate is accurate in naming the relevant statute. It should be noted that stating the wrong date does not detract from the fact there was statutory reference. Denunciation is not one of the aims set out in the Criminal Justice Act.

# Question 2

**2** Describe the jurisdiction of the three divisions of the High Court. **[10]**

## Exemplar 1 5 marks

2

The three divisions of the High Court are the Queens Bench Division, the Chancery Division and the family Division

The Queens Bench Division deals with high profile Tort and contract cases, as well as some Judicial review cases. The Queen Bench deals with tort and contract cases where the claims are high, in terms of money

The family Division deals with cases to do with family problems. it deals with cases to do with family issues in different countries, and uses the Hague convention. The Hague convention is to do with adoption, fostering e.c.t; matters of children, these also include matters such as custody e.c.t.

Lastly is the chancery Division; here they also deal with ~~matters~~ tort and contract claims, but on a lower scale compared to the Queen's Bench Division which deals with cases that have claims of around £100,000 and more. This is simular to the Queen's Bench, however due to its authority deals with smaller claims.

## Examiner commentary

The candidate is aware that that there are three divisions of the High Courts and is able to name them accurately. There is some reference to the jurisdiction of the Queen's Bench Division and Family Division but stated in a basic way. There is a lack of understanding as to the jurisdiction of the Chancery Division.

Whilst the response contains inaccuracies, this does not detract from the brief but accurate information provided about two of the three divisions. Candidates were required to provide the name and accurate detail on all three divisions to achieve Level 4.

## Exemplar 2 4 marks

2. The high court operates within it's 3 divisions the queen's bench (which is considered the ~~bo~~ biggest of the 3), the Chancery division as well as the Family division. The queen's bench division deals with civil and criminal cases, as well as tort cases such as cases involving tresspassing and contract cases between businesses. The Chancery division deals with specialist negligence cases as well as issues with contract and the ~~Family~~ Family division deals primarily with family issues such as issues with trusts as well as children and the custody of minors. The high court can hear appeals from small / fast track cases but most of the time cases of this nature go to the court of appeal.

## Examiner commentary

The candidate names all three divisions accurately and credit is awarded. The description of the jurisdiction of the Queen's Bench division contains largely accurate information, although the description of the Family Division jurisdiction is brief.

The knowledge and understanding is less than that demonstrated in the other exemplar for Question 2, hence the difference in marks. There is no understanding of the Chancery Division's jurisdiction demonstrated.

This response is typical of Question 2 responses. The question was not popular, with very few candidates attempting it.

# Question 3

**3** Discuss which sentences achieve the aim of protecting the public. **[15]**

## Exemplar 1 10 marks

3 Many sentences can be given to defendents to protect the public, one of these being a curfew. Many crimes are commited in the evening, defendents use the mask of night to aid them in their offence. Sentencing someone with a curfew brings them off the street, when at a time when the offence is likely to occur. If you remove someone from a dangerous environment, the offence is unlikely to occur. However, many argue that if some is truly criminal in nature the will commit the act regardless of the time.

## Examiner commentary

The extract above illustrates a well-developed point for the purposes of a Section A discussion question. The candidate begins by naming a sentence which they consider will achieve the aim of protecting the public, namely a curfew, and a brief reason as to why is given. This is considered a point. It is worth noting that a simple statement of fact will not attract credit unless accompanied by some detail. The candidate continued by explaining how the curfew will protect the public by taking someone off the street. This is considered a development of the point. They then finish this discussion point by adding a counter-argument.

A range of discussion points were required for Level 4. There is no requirement that every discussion point is well developed, however, in order to demonstrate excellent analysis and evaluation, at least one well-developed point is required.

## Exemplar 2 11 marks

Fines can also be argued to protect the public. For example, if the fine is substantially high, the offender will unlikely reoffend after suffering financially from sentencing. This would deter them away from reoffending ~~when they~~ after they have suffered their consequences. ~~However It could be argued that the~~ As a result, the public is protected. However, this may be ineffective ~~if the~~ for an offender of high income as they would not suffer and so, are likely to reoffend. Therefore the

public is not protected. Moreover, similarly to
community services, they are still exposed to
the public. ~~and so~~,

## Examiner commentary

This extract of an answer shows a very good, detailed, developed point. Examiners identify well-developed points when they're marking, but the points are not counted numerically to determine levels nor is there a cap on the marks awarded for a very well developed point as illustrated here. Marks are awarded for the entire discussion.

This candidate has taken a sentence some may consider unusual when considering sentences that protect the public, fines. However, their discussion of fines and how, in their opinion, they protect the public was both informed and detailed. The candidate has thought about the financial implications and quite accurately assesses the impact of a financial penalty and how that may make offenders think twice before committing other offences. They conclude by acknowledging that this may not work for some. A detailed and focused discussion point.

# Question 4

**4** Discuss the benefits of using the civil courts to solve a dispute. **[15]**

## Exemplar 1 — 9 marks

The civil court contains circuit and district judges who have all gone through intensive training. This means that the majority of the time the case will be met to the right conclusion with a correct ruling, creating fairness and certainty in the law,

## Examiner commentary

This candidate sets out, in their opinion, a benefit of using the civil courts to solve a dispute – the use of judges. There was no additional credit for naming the types of judges. The candidate develops this point by explaining that the intensive training should mostly create correct and fair rulings.

This candidate gave a range of similarly set out discussion points, omitting the well-developed discussion points needed for the top Level. Very little 'extra' was required for the point illustrated above to be considered well-developed.

## Exemplar 2 — 5 marks

Q4 A

There are quite a few benefits of using courts to solve a dispute, for example; unlike other forms of dispute resolution, such as mediation, verdicts reached in the civil courts are binding, therefore people cannot go back on ~~them~~ their word, and the dispute is resolved once and for all. There will be consequences inflicted, should anyone fail to follow decision made by court. Although it can be a very time-consuming process, it is structured and professional, meaning that people trust and feel confident in the system.

## Examiner commentary

In this extract, the candidate has explained that a benefit of using the civil courts to solve a dispute is the binding decision. The 'binding' point is developed by adding that this stops people going back on the decision.

As the next 'point' is not linked to the issue of binding decisions – the time-consuming, structured nature of the court, it is considered a new discussion point and not a well-developed point (needed for the higher levels).

The candidate needed more detailed developed discussion points to achieve the higher levels.

# Question 5

Hamza rents out houses to students. He goes to each house to collect the money he is owed. At the first house, Sylvia is not in, but through the window Hamza sees her laptop computer on a desk. He rings his brother, Muhammed and sells it to him for £100, telling him to collect it from the house. At the next house, Hamza notices some rare plants growing in a large plant pot. They were planted there by Freddie, the tenant. Hamza digs up several of the plants and gives them to his friend, Mabel, as a gift. At the last house, Taylor says that she only has enough money for her gas bill, but not for her rent. She gives the money to Hamza and asks him to pay her gas bill. Hamza agrees, but instead, keeps the money to pay for the rent.

**5** Advise whether Hamza is criminally liable for theft. **[25]**

## Exemplar 1 — 25 marks

5 The definition of theft comes from the Theft Act ~~19~~ 1968 and under s.1, it is ~~the~~ where the defendant "dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it." Firstly, ~~there~~ the actus reus requires an appropriation (3). This is where the defendant has

assumed the rights of the owner. They don't need to assume all the rights ~~(Ma~~ (R v Morris) and appropriation can occur even with the owner's consent (R v Gomez). Finally, a gift can also be appropriated (R v Hinks). Hamza has appropriated property as he has assumed he has rights over the laptop and the plants. He has also appropriated the money, although it was ~~[illegible]~~ given with ~~consent~~ consent from Taylor, he has not used it for the intended purpose and has instead ~~used it to pay~~ kept it as rent money. The next stage is that the items

## Examiner commentary

The script was awarded full marks. This extract illustrates one of several ways a candidate can approach an application question, as there is no set or preferred way of setting out AO1 and AO2 information.

The extract shows excellent knowledge and understanding of s3 Theft Act. The candidate explains what is meant by appropriation, citing both statutory reference and cases. It is important to note that simply naming the case does not detract from the fact that there has been a wide range of relevant cases cited. This candidate continued with this approach when addressing all elements of the Theft Act.

The candidate concluded by advising Hamza that he would be criminally liable for the theft of laptop, plants and money as per the question.

# Exemplar 2

**14 marks**

Section 4 is to do with property, this could be
personal property, intangible property or a building.
in terms of personal property it was seen in Kelly
and Lindsay that body parts count if preserved,
in R v Marshall D's were selling Train tickets and
it was held that these were the property of the
London underground. intangible property is property
with no physical presence e.g Patent. in Oxford
v. Moss; it was held that having knowledge of the
exam questions wasn't theft. in AG of Hong Kong
Government of Hong Kong v. Chan Kai Nai; it was held
that textile quotas could be stolen as they were
intangible property. Property can be stolen in 3
ways; if a trustee breaches his rights, if a land
owners severs pieces of his property bit by bit and
if a tenent moves a fixture from the land.

## Examiner commentary

The scenario was set out in a way that gave candidates the opportunity to demonstrate both AO1 knowledge and the ability to apply that AO1 in a brief and succinct fashion to achieve AO2 marks.

Excellent knowledge and understanding of theft is demonstrated by this candidate. However, as this extract illustrates, many candidates included irrelevant information. This candidate explains s.4 Property, what property and then uses many cases to illustrate their point. AO1, Level 4 states '*excellent citation of fully* ***relevant*** *case law*'. Credit is not available for the 'quantity' of cases used, unless they are all relevant.

Time management is crucial in this examination. In this case, the candidate appears to have spent so much time setting out all their theft AO1 knowledge, they did not leave time for application. The four AO2 marks awarded came at the end in the conclusion when briefly advising Hamza that he would be criminally liable for the theft.

# Question 6

Sophie and Garry are at a charity event at their local youth club. The event is to raise funds for the football club they both play for. One of the football coaches, Dean, sees Sophie in the café buying a packet of crisps. He grabs her hand and snatches the £5 note she is holding in her hand and says 'You owe me that for this month's membership fees'. Sophie shouts at Dean, 'I have already paid. Give me my money back!' Dean refuses and walks away. At the event, there is a disco in the main room of the youth club. Garry decides to ask the DJ to play a particular song. The DJ is not there, so Garry goes behind the table where the DJ has set up his equipment. There, he notices a mobile phone. Garry puts the phone in his pocket and leaves the youth club.

**6** Advise whether Dean is liable for robbery **and** whether Garry is liable for burglary. **[25]**

## Exemplar 1 — 22 marks

6 1

Robbery is defined in Section 8 of the Theft Act as "D is guilty if he immediately before or after the time of stealing a theft, is subject to the use of force or the threat of force. The maximum sentence for robbery is discretionary life.

In order to be guilty of Robbery there must be a completed theft. Robinson states no theft no robbery, and Zerie states only deprived for a short time – no robbery. There must be force. Hale/Lockley states force is a continuing act of appropriation. ~~BCR~~ B & R states implied threat is enough. RP states that that V doesn't have to touch D. Corcoran is that force in order to steal. Dawson jury decides on the force, and Clouden jury decides what amounts to force. The mens rea is the same as theft. (D dishonestly, intention to permanently deprive).

In the scenario Dean ~~had~~ "takes the £5 note she is holding in her hand" (Hale) continuing act of appropriation. So is a theft so is robbery. (Robinson). Dean also is subject to using force on the victim as he "grabs her by the hand" he does this just before the theft that Theft Act states is an element. ~~For~~ When Dean ~~snatches~~ grabs her by the hand it is force in order to steal as it stops her from moving away. He is intending to permanently deprive her of it as he says "You owe me this from six months membership fee". Which suggests his intention is to keep it as payment.

## Examiner commentary

This extract illustrates a candidate who has chosen to set out their AO1 knowledge of robbery first before applying that AO1 to the given scenario. The candidate is methodical in their approach and works succinctly through the relevant parts using case illustrations throughout.

The candidate mentions theft briefly, twice. To start their AO1 the candidate states accurately that there must be a complete theft, with case illustration. Theft is referred to again at the end when they finish by stating that the mens rea for robbery is the same as theft. These brief mentions of theft are adequate for a robbery scenario. The candidate took the same approach to the burglary part of the response.

It is important to note that there is no set format to use when answering application questions; this is an illustration of one of several ways.

## Exemplar 2 — 17 marks

6 S.8 of the Theft Act 1968 defines robbery as ~~to~~ to occur when the defendant "steals and at the time of doing so, or in order to do so, uses force or the threat of force". Firstly, theft must be proven. S.3 states there needs to be an appropriation (R v Gomez), (R v Morris), (R v Hinks). As Dean has ~~the~~ assumed he has rights over the Sophie's £5 note, he has appropriated. S.4 states that there must be property (R v Marshall), (R v Welsh), (R v Kelly) (Oxford v Moss). The definition of property is 'money and all other ~~p~~ intangible property, real and personal, including things in action. The £5 note is money so would be considered to be property. Next, this must be belonging to another (s.5). This belongs to whoever is in possession or control of it (R v Turner) and includes trust property (R v Wain) and those with a proprietary interest (Parridge

v Bennett). Sophie was in possession and control of the
£5 note as she was in the process of using it to pay

## Examiner commentary

The extract above illustrates a candidate beginning their response by setting out and applying all the elements of theft, even though the question expressly directed candidates to advise whether Dean is liable for robbery. This candidate wrote two sides on theft, but such explanations are not relevant for this question. The robbery is the key element requiring explanation and application. The candidate appeared to lose focus once all the elements of theft had been stated and as a result, their robbery AO1 and AO2 was rushed and was not as detailed.

# Questions 7 and 10

**7*** 'The defence of consent is not fit for purpose in modern times and needs to be reformed urgently.'

Discuss the extent to which this statement is accurate. **[25]**

## Exemplar 1 24 marks

Generally speaking, you can't consent to more than an assault or battery (R v Wilson) (R v Brown), although there are exceptions to this. This has caused major problems in modern times where individuals have been banned from euthanasia and have not been allowed to consent to someone assisting their suicide. Many prominent cases such as Tony Nickleson have made headlines in the news for being unsuccessful. In cases where the person is very close to death and is merely in a vegitative state with and in a position where they can't get any more out of life, arguably they should have a right in law to be allowed to ask to have help with ending their life. Especially, where this affects the health and psychological state of their family and loved ones due to seeing them in this state. There is a huge amount of public support for a law on euthanasia to come about with pressure groups such as Dignity in Dying raising awareness and putting pressure on the government to pass an Act. Despite the massive public outcry, the Assisted Dying Bill 2015 did not pass and there is yet to be a law to allow it.

## Examiner commentary

This extract illustrates a comprehensive discussion on euthanasia. It is an extensively well-developed point focused on whether, in their opinion; the defence of consent is fit for purpose.

The candidate is aware there are conflicting issues around consent and euthanasia. There is discussion of the current law, thus making it a very topical and emotive discussion point. The candidate addresses the issue of balancing personal autonomy against the need for reform and acknowledges that despite all the arguments for a change, there has been a failure to reform the area.

The extract above illustrates a mix of both AO1 and AO3 when addressing one issue in detail. There is no set way of answering an evaluation/essay question. Candidates may address a few points in great detail or alternatively may look at a wide range of issues in less detail. Candidates need to focus on the question and ensure that their points are fully discussed and developed, as illustrated here.

## Exemplar 2 24 marks

To conclude, it is clear that the law is urgently needing to be updated and reforms are needed for euthanasia and the exceptions, as well as the fraud element. However, as we have seen, change is slow and there is unlikely to be sufficient reform any time soon, despite the crises faced by individuals in modern times.

## Examiner commentary

Level 2, 3 and 4 descriptors all emphasise the need for a form of conclusion. Level 4 AO3 states 'key points are fully discussed and fully developed to reach a valid conclusion'. The conclusion therefore is an essential part of AO3.

This extract shows a succinct and precise conclusion that satisfies the Level 4 AO3 descriptor. There is no requirement that candidates re-write their discussion points in the conclusion and no additional credit is available for such an approach.

# Question 8

Susan plays the guitar in a successful popular music group who are on tour around the country. Susan is several months' pregnant and has said she will have to stop playing soon. This has upset the lead singer, Jane, who wants to start a world tour next month. At the latest concert, Jane says some horrible things about Susan to the audience. This upsets Susan, and she asks Jane to stop. Instead, Jane kicks Susan in the stomach. Susan is rushed to hospital where she is told that her unborn baby has died as a result of the kick to her stomach. Jane goes to see Susan in hospital. This causes an argument. During the argument, Jane hits Susan over the head with a chair crushing her skull. Susan dies immediately.

**8** Advise whether Jane is criminally liable for the murder of Susan and the murder of Susan's unborn child. **[25]**

## Exemplar 1 — 13 marks

8 Jane (Defendent, 'D') may be criminally liable for her actions against Susan (victim 1, 'V1') for murder.

~~Firstly,~~ In order for there to be a murder actus reus (AR) must be established. Firstly, there must be an unlawful killing where self defence was not involved. This can be established as "during the argument, 'D' hits 'V1' over the head with a chair crushing her skull" causing V1 to die immediately. Along side this element of ~~m~~ AR, causation must be established. Under factual causation, if it wasn't 'but for' the D hitting V1 over the head with a chair, her skull wouldn't have been crushed causing ~~to~~ her to die immediately. (R v Pagett) ~~[illegible]~~

Under legal causation, it can be said that D's actions were of more than minimal cause (R v Hughes) as it can be seen to be reasonably foreseeable that hitting someone over the head with a chair will cause serious damage, in this case death.

Secondly, the unlawful ~~there must be an~~ killing must be against a ~~[illegible]~~ reasonable person in being. Although, V1 does become brain dead (Malcherek v Steel), this occurs as a result of D's actions not before. Therefore, a person in being can be established.

Lastly, the final AR element can be establish of being under the Queen's peace as ~~[illegible]~~ it's not at a time of war.

## Examiner commentary

This response illustrates a candidate setting out clearly but succinctly the relevant legal rules, in particular, the actus reus elements including causation. The candidate takes one actus reus element at a time and uses it effectively to apply to the situation involving Susan. The extract is useful in showing how breadth of knowledge is all that is needed. There is no requirement for in-depth knowledge of each element.

## Exemplar 2 — 23 marks

8 Murder is a common law offence and is defined by Lord Coke who stated it is 'the unlawful killing of a reasonable creature in being, under the Queen's peace, with malice aforethought, express or implied.' The actus reus of this is 'the unlawful killing of a reasonable creature in being, under the Queen's peace.' The murder can be due to an omission (Gibbins and Proctor - neglecting a child). The defendant must have factual causation using the 'but for' test (Pagett) as well as legal causation (being more than the minimal cause - Kimsey). The chain of causation must not be broken - Jordan. Killing is allowed in the course of war, unless they are prisoners of war. A-G Reference No 3 states killing a fetus is not murder unless they can live independent from the mother. As for the mens rea, it is 'malice aforethought, express or implied.' Express malice is direct intent (Mohan) and oblique intent (Woolin). Implied malice is intending GBH but murder is caused (Vickers). Transferred malice can also make you guilty (Gnango). Although not relevant, there are some useful cases in regards to murder. Under the S76 Criminal Justice and Immigration Act 2009, when using self-defence, force can sometimes not be accurately measured. Self-defence force can be excessive though (Martin). Thin skull

rule (Blaue).

In regards to Jane and the killing of Susan's unborn child, the child was killed and wouldn't have died 'but-for' Jane's kick to the stomach, she was also more than the minimal cause and there was no break in the chain of causation. Jane is guilty for factual and legal causation. It is under the Queen's peace so it is an unlawful killing. ~~In terms of~~ However due to Susan's child not being born, Jane cannot be guilty of killing Susan's child. As for the mens rea, ~~Jan~~ it is unclear if Jane wanted to kill the child or not. Although it could be oblique intent, I believe that a kick to the stomach after an argument caused by the baby would mean she had direct intent to kill the unborn child.

In regards to Jane and the killing of Susan, Susan is a reasonable person and the killing was done unlawfully. Susan wouldn't have died 'but-for' Jane smashing a chair against her head and she was more than the minimal cause. There was also no break in the chain of causation. Therefore, Jane would be guilty of both factual and legal causation. Furthermore, it was under the Queen's peace so the killing is unlawful. As for the mens rea, I believe she has oblique intent as it was during an argument so it may have been spur of the moment. I think Jane was virtually certain of ~~throwing a~~ hitting Susan's head with a chair being dangerous and causing death.

Overall, Jane would not be criminally liable for the ~~death~~ murder of Susan's unborn child because, although Jane satisfies all other areas, a fetus cannot be killed. However, Jane would be criminally liable for the murder of Susan - as she had both factual and legal causation and oblique intent.

## Examiner commentary

This extract illustrates a candidate who had chosen to set out the AO1 to begin with and once that is done, the AO1 is applied to the two deaths (AO2). The candidate demonstrates excellent knowledge and understanding of all the elements of murder. There is excellent citation of fully relevant case law throughout. Note the candidate does not go into detail of the cases, merely using them to illustrate each point, using their time effectively. Equal amount of time is given to AO1 and AO2.

To end the answer the candidate goes back to the question and advises whether Jane is criminally liable for the murder of Susan and the murder of Susan's unborn child.

# Question 9

Adriana and Kalvin have been married for five years. Adriana has not worked during this time, as she feels that Kalvin should be the one who has to go out to work. Throughout the marriage Adriana has regularly physically and mentally abused Kalvin. This includes hitting Kalvin and calling him 'useless'. Kalvin has been diagnosed by his doctor as suffering from depression brought on by Adriana's behaviour towards him. In consequence, Kalvin has for over a year consumed large amounts of alcohol to cope with the abuse. One morning, Kalvin has drunk several strong beers and is running late for work because Adriana has made him prepare her breakfast. As Kalvin leaves to go to work, Adriana complains that he has made her the wrong breakfast and slaps him in the face. Kalvin picks up a kitchen knife, stabs her in the chest, killing her instantly.

9 Advise whether Kalvin can avoid liability for murder by using the defence of diminished responsibility. **[25]**

## Exemplar 1 — 9 marks

9 kalvin may be able to avoid liability for murder by using the partial defence of diminished responsibility. This is where a person acts due to a recognised medical condition ~~[illegible]~~ which causes an abnormality of mental functioning.

The first part to be established in order to use the defence of diminished responsibility is whether the defendant is suffering from a recognised medical condition. In this scenario, kalvin has been diagnosed by a doctor with depression, as a result of Adriana's regular physical and mental abuse. Therefore, he satisfies this area for the defence of diminished responsibility

The next part to establish is whether this recognised medical condition then caused an abnormality of mental functioning, causing a person to act ~~out~~ out. In this scenario, the abnormality of mental functioning could be caused by the depression, making kalvin use the knife to stab and kill Adriana.

However, some may argue that the consumption of alcohol is the reason for kalvin killing Adriana. But, if it can be proved by the defence that kalvin was also suffering with alcohol dependency syndrome, this will be included as a recognised medical condition as well. This would mean that he would still be able to rely on the defence of diminished responsibility.

## Examiner commentary

The candidate begins by addressing two elements of diminished responsibility: abnormality of mental functioning and recognised medical condition (not in that order).

There is some reference to Kelvin's consumption of alcohol. A full and detailed discussion of intoxication was not necessary for full marks, but some acknowledgment in terms of AO1 and AO2 was. This candidate acknowledges the issue and takes account of Kelvins drinking, this was considered adequate and therefore creditworthy.

The candidate applies the law to Kelvin's situation, in a basic fashion with little depth or detail. Had there been, for example, greater detail on the issues of Kelvin drinking, linking whether it would be covered by the principle in Dietschmann or if Kelvin was suffering from alcohol dependency syndrome, the response would have moved up a Level. Substantial impairment is not addressed, as a result the information provided indicates basic knowledge and understanding of diminished responsibility. The lack of statutory reference and/or case authority dictates that AO1 has to be Level 2.

## Exemplar 2 25 marks

**Extract 1**

9. Diminished responsibility is a partial defence under S.2 Homicide Act 1957 amended by Coroner's Justice Act 2009. It is a defence for the specific crime of murder. This means that if successful, the defendant's offence will lower to the basic intent crime of voluntary manslaughter.

**Extract 2**

Overall, if the jury decided that ~~the defendant's~~ Kalvin's ~~own~~ mental state explains his actions, and that alcohol was not a substantial factor, Kalvin can avoid liability for murder by using the defence of diminished responsibility.

## Examiner commentary

The perfect start and finish. Whilst a conclusion is essential for full AO2 marks, an introduction is not. However, these extracts illustrate the benefit of both. The candidate begins by explaining where diminished responsibility fits in, in terms of it being a partial defence. They explain that it is governed by statute and what the consequences of a successful plea of diminished responsibility are. The introduction indicates the candidate knows the area of law and why it is used.

To end, the candidate goes back to the question and does as asked, advises whether Kalvin can avoid liability for murder by using the defence of diminished responsibility, succinctly and accurately. Answering the question is a must for top Level 4 marks.

# Appendix

Full exemplar answers for questions 1, 5, 6, 7 and 9. Provided for information.

## Question 1, Exemplar 1

| | | |
|---|---|---|
| 1 | a | The five main aims of Sentencing are outlined in the Criminal Justice Act 2003. The sentences aims are what the judiciary uses in order to ~~a~~ achieve with a sentence. |
| | | |
| | | Retribution is plainly described as 'eye for an eye' means if one crime is commited the defendant should suffer. An example is the Death Penalty for murder. In the UK it is based on custodial sentences. |
| | | The next is Rehabilitation which seeks to reform the defendants behaviour. This means they are able to be reintegrated back into Society. An example of this is counselling for ADHD or drug rehab. |
| | | Deterrence is the next aim of sentencing. There are two types. General deterrence which is a harsh sentence given to someone in order to ~~pr~~ make a prevent of crime and scare the public. The next is an individual deterrent for example a big fine for a minor crime to prevent D from committing a crime. |
| | | Reparation is the next which is paying back for the crimes committed. This is often seen as justice for victim as it seeks to return ~~to~~ V in similar state they were in before. An example is a compensation scheme or the D meeting the victims of |

3

Question Part

① dangerous members of society out as they can't commit offences in prison.

his crime to show the impact of what he has done.

The final aim ~~is~~ that is mentioned additionally is denunciation. This is when society gives a blameworthy on the D and shows its disapproval on the crime that they have committed.

Protection of the public – Custodial sentences. Exams ① ①

## Question 5, Exemplar 1

5 The definition of theft comes from the Theft Act ~~19~~ 1968 and under S.1, It is ~~the~~ where the defendant "dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it." Firstly, ~~there~~ the actus reus requires an appropriation (3). This is where the defendant has assumed the rights of the owner. They don't need to assume all the rights. ~~(R v~~ (R v Morris) and appropriation can occur even with the owner's consent (R v Gomez). Finally, a gift can also be appropriated (R v Hinks). Hamza has appropriated property as he has assumed he has rights over the laptop and the plants. He has also appropriated the money, although it was ~~[illegible]~~ given with ~~consent~~ consent from Taylor, he has not used it for the intended purpose and has instead ~~used it to pay~~ kept it as rent money. The next stage is that the items appropriated must amount to property (s.4). Property is "money and all other intangible property, real and personal, including things in action." Examples of property include body parts (R v Kelly), blood and urine

Simples (R v Welsh), the reselling of London Underground tickets (R v Marshal) and confidential information (Oxford v Moss). The laptop, rare plants and the money are all property. Next, this must be 'belonging to another' (s.5). This refers to whoever is in possession or control of it (R v Turner) ~~and~~ includes trust property (R v Wain), those with a proprietary interest (Davidge v Bennet) and those who have received it by Mistake (R v Hancock). The laptop belonged to ~~Muhammad~~ Sylvia as she was in possession and control of it as it was in her house. The plants are considered to be ~~Freddie's property as they were growing~~ Freddie's property as they were growing in his plant pot. They were not available to the public. The money is in ~~another~~ Mr Hamza's control, however

it has been used for the wrong purpose. Taylor intended for it to be for the gas bill, and he has kept the money for himself instead. The mens rea of theft is based on dishonesty (S.1). Someone would be considered to ~~be dishonest if they have~~ not have been dishonest if they a) believe they have a right in law to deprive the other of it, ~~b) believe the true owner can't be~~ (R v Holden); b) believe the true owner can't be found by taking reasonable steps (R v Small); c) As Hamza knows the where the owners live, b would not apply. He knows that he doesn't have a right in law to have the laptop, and the plants, however he could argue that he is owed the rent money so is lawfully allowed to keep the money from Taylor. Where the above doesn't apply, the Ghosh test is used which comes from R v Ghosh. This involves a two stage test. Firstly, would the reasonable person deem it dishonest? (this is an objective test). A reasonable person would regard the fact that Hamza has seen the laptop and sold it to his brother, without Sylvia's consent and without giving any of the profits of £100 to her. The digging up of several plants, which were planted by Freddie and giving them to Mabel as a gift would also be deemed dishonest because he has not received consent from Freddie. The fact that Hamza kept the ~~rent~~ money from Taylor would also be deemed as dishonest as she had clarified to him that the money was to

be used to pay for the gas bills. Therefore the first stage is satisfied. The second stage of the Ghosh test states that the defendant knew that he would be judged on these standards of dishonesty. It is likely that Hamza will appreciate that his actions of selling the laptop, digging up the plants and keeping the money he received from Taylor and the money he got from selling the laptop from his brother would all be dishonest. The final stage from the Theft Act 1968 is an "intention to permanently deprive the other of it." (S.7) This includes taking the "goodness out of it." (R v Bagshaw). As Hamza intended to sell the laptop, he intended to permanently deprive Sylvia of it. By taking the rose plants, Hamza has taken the goodness out of them as if he intended to give them back later, they would not be in the same condition they were in, in the plant pot. Finally, he has kept Taylor's money for himself which means he has permanently deprived her of it. Therefore, Hamza would be guilty of theft for all three items.

## Question 5, Exemplar 2

5 The law on theft is ~~layed~~ laid out in section 1 of the Theft Act 1968, it is a triable-either way offence and has a maximum sentence of five years. A defendant will be guilty of theft if he "dishonestly appropriates property belonging

to another with the intention to permanently deprive", the is layed out in section 2 to 6 in the act.

The actus reus of theft is the "appropriation of property belonging to another"

Appropriation is the "assumption of the rights of the owner" as set out in section 3(1) of the act and meas even if you assume one right such as selling it like Hamza you have appropriated. Hamzas case is simile to that of R v Pitham and Helm where the D appropriated his neighbours furniture as it had put it for sale and although he hadn't sold it, he still took the "rights of the owner". Appropriation only has to take place at one point in time, such as in R v Atakpu and Abrahams; where the defendants had appropriated cars in Germany and drove to Dover. It was held as the didn't appropriate in England, they weren't liable for theft here. Also you can still appropriate with

consent; such as in Lawrence v Commissioner of the Met Police; here a tourist allowed D (taxi driver) to take the necessary money out the wallet, and D took more than need. Also deception isn't necessary for appropriation in R v Hinks; D befriended man with low IQ ~~yet~~ who would willingly give her gifts

Section 4 is to do with property, this could be personal property, intangible property or a building. In terms of personal property it was seen in Kelly and Lindsay that body parts count if preserved, in R v Marshall ] D's were selling train tickets and it was held that these were the property of the

London underground. intangible property is property with no physical presence e.g Patent. in Oxford v. Moss; it was held that having knowledge of the ~~exam~~ exam question wasn't theft. in ~~at~~ Attorney General of Hong Kong ~~V~~. Chan Keung Nam; it was held that textile quotas could be stolen as they were intangible property. Property can be stolen in 3 ways; if a trustee breaches his rights, if a land owners severs pieces of his property bit by bit and if a tenent moves a fixture from the land.

In terms of the plants Muhammed steals and gives mabel it can be said he has stolen because in S4(3) and 4(4) of the act it says if the plants are wild they are protected under the wildlife and countryside act 1981, and although he hasn't picked them for commercial use it is still someone elses property on which he has no right.

Section 5 is to do with ~~prop~~ belonging to another. S5(1) says belonging is to do with "having possesion or control.... or having a proprietary interest." in terms of possession and control it means e.g if B steals A's car, B has possesion or control. This possesion or control isn't always legal. in R v Turner; D left his car at the mechanics to be fixed and later jumped the fence to get the car back, held to be theft. In Basildons Magistrates court; it was held that bags outside a chariety shop were still in possesion of their original owners. However there is a differencence between something lost and something abandoned. seen in Kenns v McKinnon when D took lost golf balls from golf course, held to be theft

Also you have to consider proprietary interest, this means you can have something, but it's not really yours. This is seen in R v Webster; Army Sergeant recieved a medal and a copy, he sold the copy on ebay, held to be theft as Ministry department of Defence had a proprietary interest in the medal.

In terms of the mens rea for theft, you must be 'dishonest' and have an 'intention to permanently deprive'.

~~There are three~~ in the case of ~~R v Velumyl; it was held to be dishonesty as~~

There are three situations set out in S2(1) that says when the defendant may not be liable and dishonest as he had a genuine belief that what he did was fine. S2(1)(a); when you believe you are lawfully allowed, S2(1)(b), if the V knew about the situation they would consent and S2(1)(c) when you have done all you can to find the original owner but cannot.

Also S2(2) states that if a person "appropriates property belonging to another dishonestly ... nevertheless willing to pay", means even if you are willing to pay, you are still being dishonest

The case of R v Ghosh established the Ghosh test on dishonesty; 1. would a reasonable and honest person do what D did in the situation. 2. Did the D not realise what he was doing.

~~Lastly is "intention to permanently deprive"~~
~~Firstly is if you were under an obligation~~ * In R v Hill; D wasn't under an obligation to deal with the tickets and so wasn't liable. However in Davidge v Bunnett; D's house mates gave her money for the bills specifically.

Also was it a mistake in Attorney General reference 1985; D had received an overpayment in sales, and didn't return it, but was under obligation to, so g had intention to permanently deprive. However in R v Gilks; he had received an overpayment in gambling repayments, but wasn't under a legal obligation to pay it back

Lastly is intention to permanently deprive, it was held that if the value, virtue and goodness of something is not gone then it isn't intention to deprive. In R v Goodwell; D borrowed some tapes to copy and then returned. Held as the value, virtue and goodness was still there, this there's no intention to permanently deprive.

Overall Hamza is criminally liable for theft as he has shown various example of "dishonestly appropriating property belonging to another with intention to permanently deprive" E.g trying to sell Slyvias laptop, taking fredas flowers and taking Taylors gas money saying he would pay it, but not paying it when under obligation

# Question 6, Exemplar 1

| | | |
|---|---|---|
| 6 | 1 | Robbery is defined in section 8 of the Theft Act as "D is guilty if he immediately before or after the time of doing a theft, is subject to the use of force or the threat of force. The maximum sentence for robbery is discretionary life. |
| | | In order to be guilty of Robbery there must be a completed theft. Robinson states no theft no robbery, and Zerie states only deprived for a short time – no robbery. There must be force. Hale/Lockley states force is a continuing act of appropriation. ~~B&R~~ B & R states implied threat is enough. RP states that V doesn't have to touch D. Corcoran is that force in order to steal. Dawson jury decides on the force, and Clouden jury decides what amounts to force. The mens rea is the same as theft. (Dishonesty, intention to permanently deprive). |
| | | In the scenario Dean ~~tod~~ "takes the £5 note she is holding in her hand" (Hale) Continuing act of appropriation. So is a theft so is robbery. (Robinson). Dean also is subject to infering force on the victim as he "grabs her by the hand" he does this just before the theft that Theft Act states is an element. ~~Con~~ When Dean ~~snatches~~ grabs her by the hand it is force in order to steal as it stops her |
| | | from moving away. He is intending to permanently deprive her of it as he says "You owe me this from months membership fee". Which suggests his intention is to |

keep it or payment.

~~In Conversion Regin was~~
Burglary is defined in S9 of the Theft Act 1968 as "D entered a building or part of a building as a trespasser, with intent to cause gbh, steal or cause unlawful damage. ~~they~~ There are two types of Burglary stated in the Theft Act. ~~Blast~~ ~~edit~~
D must enter a building. ~~the~~ Entry is not defined by Theft Act 1968. Collins states it must be substantial, Brown states ~~it~~ it must be effective, and Ryan Jury decides if D entered. A Building is defined in S4 as including houseboats or inhabited vessels. A building must be of considerable size under the case of Stevens v Gourley. must have some permanence under Leathley. A building does not include those with wheels ① and it includes a part of a building under the case of Walkington (restricted cashier part). Lastly D must be a trespasser under Jones and Smith, trespasser is in excess of permission. Barker is that the D is a trespasser if they go beyond their permission under Barker. The next req is intent to steal, GBH or unlawful damage.

In the scenario Garry substantially enters (Brown) but the jury would decide (Ryan) into the DJs set with intent to play a song. It's a part of a building under Walkington as generally no one is allowed behind the DJ set apart from the DJ. (Walkington).

Garry although not intending theft, GBH, or unlawful damage is still guilty of S9(1)(a) as he doesn't have to intend to do any off these in order to be guilty of the act.

Secondly Garry notices whilst when he is behind the DJ set that "he notices a mobile phone", "Garry puts the phone in his pocket".
The second part of Burglary is defined in S9(1)(B) as D enters a building / part of a building, as a trespasser and then develops an intention for theft or GBH. As Gary entered the part of the building as a trespasser as he is in excess of permission (Jones and Smith). He then intentionally commits a theft by "putting the phone in his pocket". So he'd also be guilty of S9(1)(B), as he develops another intention whilst in the building.

In conclusion Dean would be liable for robbery. This is because he commits a theft with the use of force just before the theft & under coercion of force in order to steal, he also ~~steals~~ intentionally deprived the other of it so would therefore be guilty of Robbery. However conviction rates are only 9% so may not be successful (200 km)

Secondly in conclusion Gary would be liable for two accounts of Burglary. He would be guilty of S9(1)(a) even if he didn't commit a theft, gbh, or inflict unlawful damage as he can still be done for entering a part of a building as a trespasser. He'd also be guilty of S(9)(1)(B) as he

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| | | ~~de~~ developed an intention one he had already any part of a building (wreckers) as a trespasser, as he stole the phone (theft). |
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| | | There are no current reform proposals for either of these offences however some argue robbery is unfair as any minimal force is needed. |

## Question 6, Exemplar 2

| | | |
|---|---|---|
| 6 | | S.8 of the Theft Act 1968 defines robbery as ~~[illegible]~~ to occur when the defendant "steals and at the time of doing so, or in order to do so, uses force or the threat of force". Firstly, theft must be proven. S.~~3~~ states there needs to be an appropriation (R v Gomez), (R v Morris), (R v Hinks). As Dean has ~~[illegible]~~ assumed he has rights over the Sophie's £5 note, he has appropriated. S.4 states that |

| | | |
|---|---|---|
| | | there must be property (R v Marshall), (R v Welsh), (R v Kelly) (Oxford v Moss). The definition of property is 'money and all other ~~p~~ intangible property, real and personal, including things in action.' The £5 note is money so would be considered to be property. Next, this must be belonging to another (s.5). This belongs to whoever is in possession or control of it (R v Turner) and includes trust property (R v Wain) and those with a proprietary interest (Davidge v Bennett). Sophie was in possession and control of the £5 note as she was in the process of using it to pay for a packet of crisps. The Ghosh test to see whether Dean has been dishonest (s.2) would need to be used. This is because the exceptions where the defendant wouldn't be deemed as dishonest such as believing they have a right in law to deprive the other of it (R v Holden) and whether the real owner wouldn't be found by taking reasonable steps (R v Small) wouldn't |

apply here as Dean knew the real owner. The first stage of the Ghosh test looks at whether the reasonable person ~~has be~~ would see ~~it~~ as being dishonest. This would be the case as Dean could have politely asked Sophie for the money she owed for the membership fees and they could have arranged for her to pay him back. The second stage is whether the defendant appreciates that he would be judged on these standards. As Dean is likely to know that Sophie had already paid for the fees, he would know that the reasonable person would deem it to be dishonest. The final part of theft is whether he intended to permanently deprive Sophie of the money (R v Bagshaw). As he walked away and didn't acknowledge the fact that she said she had already paid for it, this shows clear intent. Therefore the theft element of robbery applies. Next it must be proven that Dean used force in order to steal (R v Hale). As Dean has committed a battery which is the unlawful application of physical force (R v Ireland). He has ~~used~~ committed robbery. This is because he has directly (DPP v Day) grabbed her hand and snatched the money. This has gone beyond what the ordinary person would consent to (Collins v Willcock). The mens rea of this is also satisfied as he tells her she owes money whilst snatching it. Therefore, Dean is guilty of robbery.

Gary may be guilty of burglary. S.9(1)a of the Theft Act states that this occurs when someone enters a building as a trespasser with the intent to steal while 9(1)b occurs when the defendant enters a building as a trespasser and at the time of doing so, commits theft, gbh or criminal damage. Firstly, there must be an entry which is effective. Gary has entered the youth club. Next he is considered to be a trespasser if he "exceeds his permission" ~~(Hillen v~~ (Hillen and Pettigrew v ICI). It was decided that "when you invite someone to use the staircase, you don't invite them to slide down the bannisters." Garry has exceeded

his permission by going behind the DJ's table. Finally, it must be a building or part of a building (R v Clinton) This is defined as being intended to be permanent and endure for a considerable time. The main room is therefore part of a building (R v Walkington). (R v Webster). The taking of the mobile phone would amount to theft. As Garry has committed theft after entering part of the building as a trespasser, he would be guilty of Section 9(1b) burglary.

## Question 7, Exemplars 1 and 2

7. The defence of consent applies as long as the defendant did not understand the nature and quality of the act. This can include where the defendant was not of the right age ~~[illegible]~~ (R v Burrell and Harmer) (R v Gillick) and would be incompetent. This is beneficial as it acknowledges the differences between individuals and the fact that some may not be able to appreciate the risk of harm resulting from their actions. ~~(R v Wilson)~~.

Generally speaking, you can't consent to more than an assault or battery (R v Wilson) (R v Brown), although there are exceptions to this. This has caused major problems in modern times where individuals have been banned from euthanasia and have not been allowed to consent to someone assisting their suicide. Many prominent cases such as Tony

Nickleson have made headlines in the news for being unsuccessful. In cases where the person is very close to death and is merely in a vegitative state with and in a position where they can't get any more out of life, arguably they should have a right in law to be allowed to ask to have help with ending their life. Especially, where this affects the health and psychological state of their family and loved ones due to seeing them in this state. There is a huge amount of public support for a law on euthanasia to come about with pressure groups such as Dignity in Dying raising awareness and putting pressure on the government to pass an Act. Despite the massive public outcry, the Assisted Dying Bill 2015 did not pass and there is yet to be a law to allow it.

There are exceptions where people can consent to more than assault or battery which include medical cases other than euthanasia, activities that occur in the cause of a relationship, cosmetic enhancements (R v Brown) and horseplay (R v Jones), (R v Aitken). While these cases show that the law is starting to take other important instances into account, they can often lead to uncertainty in the law. A clear example of this is the sports exception. In R v Billinghurst, the ~~~~ decision was that consent doesn't apply if it is "off the ball" and outside the rules of the game. This seems is a just and fair decision as it allows behaviour done out of spite to be criminally recognised. However, after this ruling, the case of R v Barnes brought about the new ruling that consent could apply in the sport, providing that you have checked 3 things. Firstly, the level of sport, then ~~~~ whether the rules of the game can

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| | | deal with it and finally whether it was done in the "heat of the moment". Both of these cases contradict each other as they disagree on whether consent should be allowed as a successful defence inside the game of sport. This is in need of urgent reform and clarity so that judges can avoid misplaced and unjust decisions. |
| | | In addition, consent doesn't apply if it is vitiated by fraud as to the identity of the person or the nature and quality of the act (R v Richardson), (R v Dica), (R v Tabassum). This seems fair as it is important that, as in the case of R v Richardson if the public were aware that a professional had their licence suspended, they would not consent to their medical treatment. The public would agree with this for all professionals, including doctors, nurses, dentists and driving instructors to name a few. |
| | | To conclude, it is clear that the law is urgently needing to be updated and reforms are needed for |

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| | | euthanasia and the exceptions, as well as the fraud element. However, as we have seen, change is slow and there is unlikely to be sufficient reform any time soon, despite the crises faced by individuals in modern times. |

## Question 9, Exemplar 1

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| 9 | | kalvin may be able to avoid liability for murder by using the partial defence of diminished responsibility. This is where a person acts due to a recognised medical condition ~~and that~~ which causes an abnormality of mental functioning. |

The first part to be established in order to use the defence of diminished responsibility is whether the defendant is suffering from a recognised medical condition. In this scenario, Kalvin has been diagnosed by a doctor with depression, as a result of Adriana's regular physical and mental abuse. Therefore, he satisfies this area for the defence of diminished responsibility

The next part to establish is whether this recognised medical condition then caused an abnormality of mental functioning, causing a person to act out ~~out~~. In this scenario, the abnormality of mental functioning could be caused by the depression, making Kalvin use the knife to stab and kill Adriana.

However, some may argue that the consumption of alcohol is the reason for Kalvin killing Adriana. But, if it can be proved by the defence that Kalvin was also suffering with alcohol dependency syndrome, this will be included as a recognised medical condition as well. This would mean that he would still be able to rely on the defence of diminished responsibility.

For the defence to be successful, Kalvin would need to be objectively judged against another person suffering from the same condition as Kalvin to see how they would have acted in the same situation. If it is thought that they would have acted in the same way than the defence of diminished responsibility may be successful.

Overall, if the defence can prove ~~with~~ beyond reasonable doubt that Kalvin acted due to his medical condition, it is likely the charge of murder will be reduced to manslaughter.

# Question 9, Exemplar 2

9. Diminished responsibility is a partial defence under S.2 Homocide Act 1957 amended by Coroner's Justic Act 2009. It is a defence for the specific crime of murder. This means that if successful, the defendant's offence will lower to the basic intent crime of voluntary manslaughter.

In order to prove diminished responsibility, the defendant must have an abnormality of mental functioning. R v Ahmed Din established that ~~is~~ it is left to the jury. ~~The three~~

The first element of diminished responsibility is ~~a~~ that the defendant must have a recognised medical condition – R v Martin. Kalvin has been ~~recogn~~ diagnosed by his doctor that he is suffering from depression. Therefore, the first element of diminished responsibility is established for Kalvin.

The second element is that there must be a substantial impairment – R v Brown. R v Gold suggested that the jury would use the Simcox direction to conclude this. The substantial impairment must be that the defendent loses a form of rational judgement, ability to understand his/her conduct - Rv Martin, or loss of self control - Rv Byrne. In this case, by Adriana constantly abusing Kalvin - mentally and physically, ~~throughout the marr~~ a 5 year marriage, her slapping him and complaining could have arguably meant that Kalvin lost self control. ~~like in Rv Byrne~~ Therefore, the second element could be established. However, it is down to the jury.

Lastly, ~~the impairment~~ the defendent's ~~state explain~~ conduct must have been due to their substantial impairment - meaning that if there was no difference, there is not defence - as ~~was establi~~ proven in Rv Osborne. ~~Wh~~ ~~where~~ In this case so it ~~could~~ is likely that if it was not for Kalvin's conditions, he may have not stabbed her in the chest.

However, an issue is raised when the defendent ~~was~~ is intoxicated. Rv Woods ~~shows~~ suggests that the defence can be used for when the victim may suffer from Alcohol Dependency Syndrome. The defence can also be used in cases ~~such as Rv Dietschmann~~ where alcohol was not a substantial factor of the defendant's actions. However, the case of Rv Dowds failed when to use diminished responsibility due to alcohol being a substantial factor. The fact that Kalvin has been drinking heavily for a year to 'cope with the abuse', it may suggest that he could suffer from ~~ADS~~ ~~Alcohol~~

to his conduct as he would have been extremely intoxicated. Therefore, the defence may no longer be available for him.

Overall, if the jury decided that Kalvin's ~~the defendant's~~ ~~own~~ mental state explains his actions, and that alcohol was not a substantial factor, Kalvin can avoid liability for murder by using the defence of diminished responsibility.

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