

GCE

Law

H418/01: The legal system and criminal law

A Level

Mark Scheme for June 2024

OCR (Oxford Cambridge and RSA) is a leading UK awarding body, providing a wide range of qualifications to meet the needs of candidates of all ages and abilities. OCR qualifications include AS/A Levels, Diplomas, GCSEs, Cambridge Nationals, Cambridge Technicals, Functional Skills, Key Skills, Entry Level qualifications, NVQs and vocational qualifications in areas such as IT, business, languages, teaching/training, administration and secretarial skills.

It is also responsible for developing new specifications to meet national requirements and the needs of students and teachers. OCR is a not-for-profit organisation; any surplus made is invested back into the establishment to help towards the development of qualifications and support, which keep pace with the changing needs of today's society.

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

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

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

© OCR 2024

MARKING INSTRUCTIONS**PREPARATION FOR MARKING
RM ASSESSOR**

1. Make sure that you have accessed and completed the relevant training packages for on-screen marking: *RM Assessor Online Training*; *OCR Essential Guide to Marking*.
2. Make sure that you have read and understood the mark scheme and the question paper for this unit. These are posted on the RM Cambridge Assessment Support Portal <http://www.rm.com/support/ca>
3. Log-in to RM Assessor and mark the **required number** of practice responses (“scripts”) and the **number of required** standardisation responses.

YOU MUST MARK 10 PRACTICE AND 10 STANDARDISATION RESPONSES BEFORE YOU CAN BE APPROVED TO MARK LIVE SCRIPTS.

MARKING

1. Mark strictly to the mark scheme.
2. Marks awarded must relate directly to the marking criteria.
3. The schedule of dates is very important. It is essential that you meet the RM Assessor 50% and 100% (traditional 40% Batch 1 and 100% Batch 2) deadlines. If you experience problems, you must contact your Team Leader (Supervisor) without delay.
4. If you are in any doubt about applying the mark scheme, consult your Team Leader by telephone or the RM Assessor messaging system, or by email.
5. **Crossed Out Responses**

Where a candidate has crossed out a response and provided a clear alternative then the crossed out response is not marked. Where no alternative response has been provided, examiners may give candidates the benefit of the doubt and mark the crossed out response where legible.

Rubric Error Responses – Optional Questions

Where candidates have a choice of question across a whole paper or a whole section and have provided more answers than required, then all responses are marked and the highest mark allowable within the rubric is given. Enter a mark for each question answered into RM assessor, which will select the highest mark from those awarded. (*The underlying assumption is that the candidate has penalised themselves by attempting more questions than necessary in the time allowed.*)

Multiple Choice Question Responses

When a multiple choice question has only a single, correct response and a candidate provides two responses (even if one of these responses is correct), then no mark should be awarded (as it is not possible to determine which was the first response selected by the candidate).

When a question requires candidates to select more than one option/multiple options, then local marking arrangements need to ensure consistency of approach.

Contradictory Responses

When a candidate provides contradictory responses, then no mark should be awarded, even if one of the answers is correct.

Short Answer Questions (requiring only a list by way of a response, usually worth only one mark per response)

Where candidates are required to provide a set number of short answer responses then only the set number of responses should be marked. The response space should be marked from left to right on each line and then line by line until the required number of responses have been considered. The remaining responses should not then be marked. Examiners will have to apply judgement as to whether a 'second response' on a line is a development of the 'first response', rather than a separate, discrete response. *(The underlying assumption is that the candidate is attempting to hedge their bets and therefore getting undue benefit rather than engaging with the question and giving the most relevant/correct responses.)*

Short Answer Questions (requiring a more developed response, worth two or more marks)

If the candidates are required to provide a description of, say, three items or factors and four items or factors are provided, then mark on a similar basis – that is downwards (as it is unlikely in this situation that a candidate will provide more than one response in each section of the response space.)

Longer Answer Questions (requiring a developed response)

Where candidates have provided two (or more) responses to a medium or high tariff question which only required a single (developed) response and not crossed out the first response, then only the first response should be marked. Examiners will need to apply professional judgement as to whether the second (or a subsequent) response is a 'new start' or simply a poorly expressed continuation of the first response.

6. Always check the pages (and additional objects if present) at the end of the response in case any answers have been continued there. If the candidate has continued an answer there, then add a tick to confirm that the work has been seen.

7. Award No Response (NR) if:

- there is nothing written in the answer space

Award Zero '0' if:

- anything is written in the answer space and is not worthy of credit (this includes text and symbols).












Team Leaders must confirm the correct use of the NR button with their markers before live marking commences and should check this when reviewing scripts.

8. The RM Assessor **comments box** is used by your team leader to explain the marking of the practice responses. Please refer to these comments when checking your practice responses. **Do not use the comments box for any other reason.**

If you have any questions or comments for your team leader, use the phone, the RM Assessor messaging system, or e-mail.

9. *Assistant Examiners will send a brief report on the performance of candidates to their Team Leader (Supervisor) via email by the end of the marking period. The report should contain notes on particular strengths displayed as well as common errors or weaknesses. Constructive criticism of the question paper/mark scheme is also appreciated.*

Annotations

Annotation	Meaning
	Not relevant or response achieves no credit
	Correct
	Point
	Developed point
	Developed point extended (well-developed)
	Applied Point
	Acknowledgment of response
	Repeat
	Not answering the question
	Blank Page
	May be used to draw attention to a word or phrase which means that the statement or reasoning is inaccurate

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 and concepts.

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 the bottom 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

Answer	Marks	Guidance
<p>1 Explain how civil cases are allocated to the appropriate track.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • Claimant completes and submits form N1 • Defendant has 14 days to accept or defend claim • Allocation questionnaire must be completed • Cases are allocated to the appropriate track by a District Judge in the County Court or a Master in the High Court or by value or complexity • Claims up to £10,000 (£1,500 for personal injury) • Will be allocated to the small claims • Claims between £10,000 to £25,000, over £1,500 for personal Injury • Allocated to the fast track • *Claims between £25,000 and £100,000 • * Allocated to the intermediate track • Other claims of £25,000+ • Allocated to the multi-track <p>*Intermediate track not necessary for full marks</p> <p>Credit any other relevant point(s)</p>	<p>8 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (7-8 marks) 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.</p> <p>Level 3 (5-6 marks) 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.</p> <p>Level 2 (3-4 marks) 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.</p> <p>Level 1 (1-2 marks) 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.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

Answer	Marks	Guidance
<p>2 Describe the role of juries in criminal courts.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • Used in cases where the defendant has pleaded not guilty • Used in the Crown Court for serious cases • Listen to the evidence • Listen to the summing up by the judge. • Decide questions of fact • Listen to the judge's advice on questions of law • At the end of the trial, jurors will retire to the jury room and discuss the case in secret • Come to a verdict/decision not guilty or guilty • Unanimous or majority decision at least 10 – 2 if necessary • Foreperson delivers the verdict <p>Credit any other relevant point(s)</p>	<p>8 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (7-8 marks) 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.</p> <p>Level 3 (5-6 marks) 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.</p> <p>Level 2 (3-4 marks) 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.</p> <p>Level 1 (1-2 marks) 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.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

Answer	Marks	Guidance
<p>3 Discuss the problems with government funding of criminal cases.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • Government cutbacks, year on year, but no corresponding drop in the number of crimes being committed or coming to court. The amount of money is not keeping up • Government may be reluctant to use taxpayers' money to fund legal aid • The Criminal Bar Association went on strike following the Government's refusal to increase the amount of money being allocated to legal aid causing a backlog of trials in the Crown Court • Fewer firms are providing criminal legal aid as financially it does not pay leading to a shortage of criminal lawyers making it difficult for defendants to access to justice • Due to the lack of lawyers offering criminal legal aid means there are more unrepresented defendants and a greater chance of being found guilty and denied justice resulting in a possible miscarriage of justice • Denial of legal aid could lead to an unfair trial according to Article 6 ECHR • Defendant must fulfil the strict application of 'interests of justice' test. To obtain legal aid the defendant must show there is a real risk of imprisonment. This results in only the most serious offenders receiving help denying many justice • The strict means test the defendant needs to pass for help in the Magistrates' Court results in only approximately 25% 	<p>12 AO3 1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (10-12 marks) 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>Level 3 (7-8 marks) Good analysis and evaluation of a range of legal concepts and issues. The response has mainly consistent focus on the question. Most of the key points are well discussed and well developed.</p> <p>Level 2 (4-6 marks) Basic analysis and evaluation of legal concepts and issues. The response partially focused on the question. Some of the key points are discussed and partially developed.</p> <p>Level 1 (1-3 marks) 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>Level 0 (0 marks) No response or no response worthy of credit.</p>

Answer		Marks	Guidance
	of defendants qualifying. There is a real risk of injustice to many and increasing litigants in person Credit any other relevant point(s)		

Answer	Marks	Guidance
<p>4 Discuss the benefits of using ADR to solve a civil dispute.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • Most types of ADR are cheaper than taking a matter to court. Whilst there may be fees to pay, they will be less than, for example, court fees, paying for lawyers etc. • ADR is usually quicker than using the civil courts. There are fewer delays and waiting for court dates • ADR is a more informal mechanism for solving a civil dispute. It lacks the formality of courts. There are no strict rules of disclosure and witnesses • Informality leads to a less stressful process of solving a civil dispute. • ADR allows for flexibility. Parties can choose where and when they want the dispute solving to take place. They can try and fit hearings around everyday life as opposed to the court opening hours • Most types of ADR are non-adversarial, legal professionals are discouraged, and parties are encouraged to cooperate and compromise avoiding the winner, loser scenario. This in turn may help future relationships • Parties can, with agreement, choose who they use to solve their civil dispute. They may select a party who is an expert in their dispute to ensure the matter is dealt with effectively • There are specialist ADR companies and organisations that can help advise and guide parties. This allows a more proactive way of dealing with a civil dispute. 	<p>15 AO3 1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (10-12 marks) 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>Level 3 (7-8 marks) Good analysis and evaluation of a range of legal concepts and issues. The response has mainly consistent focus on the question. Most of the key points are well discussed and well developed.</p> <p>Level 2 (4-6 marks) Basic analysis and evaluation of legal concepts and issues. The response partially focused on the question. Some of the key points are discussed and partially developed.</p> <p>Level 1 (1-3 marks) 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>Level 0 (0 marks) No response or no response worthy of credit.</p>

Answer		Marks	Guidance
	<ul style="list-style-type: none">• ADR takes place in private unlike most court hearings which are public. This ensures there will be no bad publicity in an ADR hearing. <p>Credit any other relevant point(s)</p>		

5. Advise whether Kobe and Heidi are criminally liable for any non-fatal offence against the person. Do **not** discuss any defences.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2: Apply legal rules and principles to given scenarios to present a legal argument using appropriate legal terminology. 12 marks.
Additional Guidance	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** include:

Define and explain assault – charged under section 39 Criminal Justice Act 1988:

- *Actus reus* - making victim apprehend immediate unlawful personal force/violence, *Ireland*, *Logden v DPP*, *Smith v Woking MPC*
- *Mens rea* - intention *Mohan* or subjective recklessness, *Cunningham*

Define and explain battery – charged under section 39 Criminal Justice Act 1988:

- *Actus reus* – unlawful application of force - direct or indirect, *Fagan v MPC*, *Martin*
- *Mens rea* - intention *Mohan* or subjective recklessness, *Cunningham*

Define and explain unlawful and malicious wounding or inflict grievous bodily harm Section 20 Offences Against the Person Act 1861:

- *Actus reus* is infliction of a wound which breaks all layers of skin, *Eisenhower* or serious harm – *Smith*
- *Mens rea* - intention to cause some harm *Mohan*, *Parmenter* or subjective recklessness, *Cunningham*

Credit any other relevant point(s).

Reference to the three offences will demonstrate Level 4 criteria. Citation will demonstrate Level 4 criteria

AO2 Indicative content

Answers **may** include:

In the case of Kobe jumping out of the wardrobe:

- His actions and words will make Heidi apprehend the application of unlawful force
- His actions and words will make her apprehend immediate unlawful force
- Kobe's actions are intentional – he made the decision to give Heidi a real fright
- Kobe will be criminally liable for assault

OR

- Due to the nature of the attraction his actions and words will NOT make Heidi apprehend the application of immediate unlawful force
- Kobe's actions are intentional – he made the decision to give Heidi a real fright
- Kobe will not be criminally liable for assault

In the case of Kobe causing Heidi to trip:

- Heidi tripping would be considered indirect application of force
- Kobe actions are not intentional but are at least subjectively reckless
- Kobe would be criminal liable for battery

In the case of Heidi punching Kobe in the arm:

- When Heidi punches Kobe in the arm she applied unlawful force
- The punch is direct, physical force
- Heidi's actions are intentional or are at least subjectively reckless
- Heidi will be criminally liable for battery

In the case of Heidi causing Kobe to cut himself with the knife:

- Heidi's punch unlawfully caused Kobe to cut himself
- A bad cut would be considered a wound and/or serious harm
- It is unlikely that Heidi had intention to cause serious harm – it does not appear to be her main aim or purpose
- Her actions are subjectively reckless
- Heidi will be criminally liable for s20 GBH

Credit any other relevant point(s)

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> 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. 	7-8	<ul style="list-style-type: none"> 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. 	10-12
Level 3	<ul style="list-style-type: none"> 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. 	5-6	<ul style="list-style-type: none"> 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. 	7-9
Level 2	<ul style="list-style-type: none"> 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. 	3-4	<ul style="list-style-type: none"> 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. 	4-6
Level 1	<ul style="list-style-type: none"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited. 	1-2	<ul style="list-style-type: none"> 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. 	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

6. Advise whether Ryan is criminally liable for burglary.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.
Additional Guidance	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** include:

Burglary - s9 Theft Act 1968

- Section 9(1)(a) – entry of a building or part of a building as a trespasser with the intention to commit any such offences mentioned in subsection s9(2)
- Section 9(2) offences: 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

Actus Reus

- Entry does not have to be effective or substantial, *Ryan*
- Building or part of a building, *Walkington*, *B&S v Leathley*
- Trespasser beyond lawful permission, *R v Jones & Smith*

Mens rea:

- For s9(1)(a) - intention to steal, inflict GBH or cause unlawful damage at point of entry
- For s9(1)(b) - intention to steal/attempt to steal or intention to cause GBH/attempted GBH having entered the building (i.e., the MR of the offence)

Mens rea for trespass:

- D knows he is a trespasser, or D is reckless as to whether he is a trespasser, *Jones and Smith*

Credit any other relevant point(s)

AO2 Indicative content - excellent application to all three issues will fulfil Level 4 criteria

In the case of the laptop:

- Ryan enters the house using a key
- Sam's house is building
- He is a trespasser. He has a key but has exceeded the permission given - Sam would not give consent if he knew Ryan intended to steal the laptop
- Ryan enters intending to steal which fulfils the *mens rea* for s9(1)(a)
- The offence is complete on entry
- Ryan will be guilty of s9(1)(a) burglary

In the case of Ryan knocking Sam unconscious:

- Having entered as a trespasser Sam commits GBH
- Ryan has not entered the building to inflict GBH
- The offence occurred after entry to the building
- GBH is one of the offences for s9(1)(b)
- Ryan has the *mens rea* of GBH - intention or at least subjectively reckless
- He will be guilty of s9(1)(b) burglary

OR

- Ryan has committed ABH, this is not one of the offences
- Ryan will not be guilty of s9(1)(b) burglary

In the case of Ryan taking Sam's wallet:

- Ryan has not entered the building specifically to steal the wallet
- The decision to steal the wallet was made after entry
- Ryan is a trespasser as he has been told specifically not to enter the office and was already trespassing
- Ryan commits theft by taking the wallet
- Ryan has the *mens rea* of theft
- He will be guilty of s9(1)(b) burglary

Credit any other relevant point(s)

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> 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. 	7-8	<ul style="list-style-type: none"> 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. 	10-12
Level 3	<ul style="list-style-type: none"> 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. 	5-6	<ul style="list-style-type: none"> 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. 	7-9
Level 2	<ul style="list-style-type: none"> 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. 	3-4	<ul style="list-style-type: none"> 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. 	4-6
Level 1	<ul style="list-style-type: none"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited. 	1-2	<ul style="list-style-type: none"> 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. 	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

7* and 10* The defence of intoxication strikes a fair balance between clear legal principle and public policy.’
Discuss the extent to which this statement is accurate.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO3 1a: Analyse and evaluate legal rules and principles. 12 marks.
Additional Guidance	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** include:

Definition: Where D is unable to form the mens rea of an offence due to being under the influence of an intoxicating substance such as alcohol or drugs

Voluntary is where the defendant is at fault for the intoxicated state, involuntary intoxication is where the defendant is not at fault

Explain voluntary intoxication:

- Explain distinction between basic and specific intent crimes, *Majewski, Heard*
- There is no defence to crimes of basic intent - the intoxication provides evidence of the mens rea for basic intent crimes, *Majewski*
- It can negate mens rea for specific intent offences where the defendant is so intoxicated that they do not form the mens rea, *Beard, Sheehan and Moore, Lipman*
- It is only a partial defence for most specific intent offences - fall back offences
- A drunken intent is still intent, *Sheehan and Moore*
- It does not work if intoxication due to ‘Dutch courage’, *Gallagher*

Explain involuntary intoxication:

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

- It is no defence where the defendant formed the mens rea, despite being intoxicated. A drunken intent is still an intent, *Kingston*

Explain the link between intoxication and mistake:

- This is rarely a defence, *Lipman*
- A mistake due to self-intoxication is no defence, *O'Grady, Hatton, Fotheringham*, s76 Criminal Justice and Immigration Act 2008
- An intoxicated mistake can be accepted as a defence to criminal damage, *Jaggard v Dickinson*

Credit any other relevant point(s).

AO3 Indicative content

Discuss any or all of the following areas in the context of striking a fair balance between clear legal principle and public policy.

Consider the following:

1. Intoxication is labelled as a defence although it is very rarely successful
2. There is a problem with fall back offences as it could provide a complete defence for some crimes e.g., theft
3. Distinction between voluntary and involuntary can be unclear
4. Rules of intoxication break several legal principles of criminal law such as coincidence of actus reus and mens rea
5. There appears to be a greater emphasis on public policy than legal principles because of the social problem of intoxication
6. There are competing interests in the defence - between personal autonomy and social paternalism. People have choices re the consumption of drink and drugs, at the same time it is recognised that excessive consumption has damaging effects on people and society and there is a need to discourage such behaviour
7. No distinction is made between the consumption of legal and illegal substances
8. Guilt is based on proof of intoxication, rather than proof of actual mens rea
9. *Majewski* rule is judge-made law based on a 'legal fiction' as there are no set rules to determine specific or basic intent crimes, *Heard*
10. Intoxication often removes the foresight or risk that an act will produce the prohibited consequence. Therefore, a defendant should not be found guilty but public policy steps in as too many people would avoid criminal liability
11. Considering the effect of pleading intoxication is unclear: in *Majewski* it suggests the defendant is guilty due to intoxication if reckless however, in *Richardson and Irwin* it was said that the jury had to be sure that the defendant would have foreseen the risk of the injury had they been sober
12. *Majewski* has been described as 'not strictly logical' but rather based on policy. *Majewski* is designed to stop people successfully pleading the defence

Other wider issues:

13. Financial arguments – cost to NHS and anti-social behaviour resulting from people using alcohol balanced against tax revenue

14. Problems of creating an effective law for those who are intoxicated due to drugs especially for driving

Reform proposals:

15. Law Commission 1993 – defence of voluntary intoxication to all crimes

16. Law Commission 1995 - recommended codifying existing law and in Offences Against the Person Bill 1998 – not enacted

17. Law Commission 2009 – Intoxication and Criminal Liability – remove specific/basic intent divide, retain voluntary/involuntary intoxication distinction.

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO3 1a	Mark
Level 4	<ul style="list-style-type: none"> 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. 	7-8	<ul style="list-style-type: none"> 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. <p><i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i></p>	10-12
Level 3	<ul style="list-style-type: none"> 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. 	5-6	<ul style="list-style-type: none"> 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. <p><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></p>	7-9
Level 2	<ul style="list-style-type: none"> 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. 	3-4	<ul style="list-style-type: none"> 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. <p><i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i></p>	4-6
Level 1	<ul style="list-style-type: none"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited. 	1-2	<ul style="list-style-type: none"> Limited analysis of legal rules and principles. The response has limited focus on the question. Discussion of any key points is minimal. <p><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></p>	1-3
Level 0	No response or no response worthy of credit	0	No response or no response worthy of credit.	0

8. Advise whether Dev can avoid liability for the murder of Yana by using the defence of loss of control. Do not discuss the offence of murder

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.
Additional Guidance	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 include:

s54 Coroners and Justice Act 2009

Partial defence specific to murder: If successful reduces conviction to manslaughter

Three-stage test:

1 The defendant must lose control, *R v Jewell*. The loss of control does not need to be sudden, s54(2)

Measures of loss of control are:

- when the D lost their ability to maintain their action in accordance with considered judgement, or
- where the D lost their normal powers of reasoning; or
- that D's behaviour was very out of character and normally they would not have acted in this way.

2 Loss of control because of a qualifying trigger, s55

- Fear s55(3) - D's fear of serious violence from the victim, *Lodge* or violence directed at another identified person, *Ward*
- Things said or done (Anger)
 - Which constitute circumstances of an extremely grave character and
 - caused the D to have a justified sense of being seriously wronged, *Bowyer*, *Hatter*

3 A person of their sex and age, with a normal degree of tolerance, might have reacted in the same way s.54(1)(c), *Asmelash*

Credit any other relevant point(s)

AO2 Indicative content

Answers **MAY** include:

- Dev appears to have lost control
- This is as a result of the abuse, panic attacks and threats
- Dev appears to:
 - have lost his ability to maintain his action in accordance with considered judgement because he is suffering from abuse, or
 - has lost his normal powers of reasoning because he is having a panic attack and shaking; or
 - his behaviour is very out of character and normally he would not have acted in this way
- Yana's words and abuse may be a qualifying trigger:
 - Dev genuinely fears she would use serious violence
 - Because she is threatening him with a knife
 - Thing or things said or done (anger) are her words and actions
 - These are circumstances extremely grave character because he is both verbally and physically abused
 - This caused him to have a justified sense of being wronged because she is so critical of him, and he became angry
- Dev's reaction would be looked at from a 30-year-old male's perspective
- His panic attacks would not be seen as relevant to his level of self-restraint and tolerance but may be seen as one of Dev's circumstances
- Dev will be successful avoiding liability for murder
- OR
- Yana's actions and words are not enough to have caused him to have a justifiable sense of being seriously wronged
- Dev will be unsuccessful avoiding liability for murder

Credit any other relevant point(s)

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> 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. 	7-8	<ul style="list-style-type: none"> 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. 	10-12
Level 3	<ul style="list-style-type: none"> 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. 	5-6	<ul style="list-style-type: none"> 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. 	7-9
Level 2	<ul style="list-style-type: none"> 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. 	3-4	<ul style="list-style-type: none"> 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. 	4-6
Level 1	<ul style="list-style-type: none"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited. 	1-2	<ul style="list-style-type: none"> 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. 	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

9. Advise whether Annika can avoid liability for any criminal offences by using the defences of insanity or automatism.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.
Additional Guidance	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 the defence of common law insanity:

- M'Naghten Rules 1843 - defence must prove defendant insane on balance of probabilities and requires the following
- Defect of reason - temporary absent mindedness is not enough to satisfy the definition, *Clarke*
- Caused by disease of mind affecting the ability to reason. Physical conditions are included in this definition such as: arteriosclerosis, *Kemp*, epilepsy - *Sullivan* and diabetes- *Hennessey*
- Induced by internal factor and prone to recur, *Kemp*, epilepsy, *R v Sullivan*, diabetes - compare *R v Hennessey* with *R v Quick*, sleep Disorder, *R v Burgess*
- Defendant does not know nature and quality of their act or that it is legally wrong, *Windle*, *Johnson*

Define and explain the defence of common law automatism:

- *Bratty v AG of NI (1963)* definition: the performance of actions without conscious thought or intention
- Requires complete destruction of voluntary control, *AG Ref No2 of 1992* due to a transitory factor not prone to recur. Covers for example: reflex actions, spasms, convulsions, sneezing, *Hill v Baxter*
- Due to an external factor for example: medication e.g., medicine for diabetes - injecting insulin, blow to the head, bee sting
- Self-induced incapacity, *Quick*, *Lipman*

Reference to both offences will demonstrate Level 4 criteria. Citation will demonstrate Level 4 criteria

Credit any other relevant point(s) Credit any other relevant point(s)

AO2 Indicative content

Answers **may**:

In the case of hitting Hugo with the glass:

- Annika's violent sneezing fit would be an involuntary act
- Annika would have no control over the sneezing fit
- The sneezing fit would be an external factor
- Annika will successfully plead automatism
- This will be a complete defence and she will avoid liability

In the case of punching Darcie and taking the sandwich:

- She has a defect of reason - her reasoning is impaired - dizziness
- The defect has been caused by a disease of the mind - epilepsy
- Epilepsy is an internal factor
- Annika is not aware of the nature and quality of her actions when she punches Darcie and takes the sandwich
- Annika will successfully plead insanity or get the special verdict

OR

- Annika does not have a defect of reason as dizziness is temporary
- She has epilepsy which is a disease of the mind
- Epilepsy is an internal factor
- She may be aware of the nature and quality of her actions
- This will not be enough to plead insanity

In the case of Annika crashing her car into her neighbour's car:

- Annika has suffered a total loss of control whilst driving
- The medication would be considered an external factor
- The double dose of medication will be seen as self-induced because Annika knows what medication she needs to take
- She is reckless in taking the double dose
- This would mean that the defence of automatism will fail

Excellent application to all three issues will fulfil Level 4 criteria. Credit any other relevant point(s)

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> 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. 	7-8	<ul style="list-style-type: none"> 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. 	10-12
Level 3	<ul style="list-style-type: none"> 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. 	5-6	<ul style="list-style-type: none"> 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. 	7-9
Level 2	<ul style="list-style-type: none"> 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. 	3-4	<ul style="list-style-type: none"> 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. 	4-6
Level 1	<ul style="list-style-type: none"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited. 	1-2	<ul style="list-style-type: none"> 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. 	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

10*. - see Question 7 above.

Need to get in touch?

If you ever have any questions about OCR qualifications or services (including administration, logistics and teaching) please feel free to get in touch with our customer support centre.

Call us on

01223 553998

Alternatively, you can email us on

support@ocr.org.uk

For more information visit



ocr.org.uk/qualifications/resource-finder



ocr.org.uk



Twitter/ocrextams



/ocrextams



/company/ocr



/ocrextams



CAMBRIDGE
UNIVERSITY PRESS & ASSESSMENT

OCR is part of Cambridge University Press & Assessment, a department of the University of Cambridge.

For staff training purposes and as part of our quality assurance programme your call may be recorded or monitored. © OCR 2024 Oxford Cambridge and RSA Examinations is a Company Limited by Guarantee. Registered in England. Registered office The Triangle Building, Shaftesbury Road, Cambridge, CB2 8EA.

Registered company number 3484466. OCR is an exempt charity.

OCR operates academic and vocational qualifications regulated by Ofqual, Qualifications Wales and CCEA as listed in their qualifications registers including A Levels, GCSEs, Cambridge Technicals and Cambridge Nationals.

OCR provides resources to help you deliver our qualifications. These resources do not represent any particular teaching method we expect you to use. We update our resources regularly and aim to make sure content is accurate but please check the OCR website so that you have the most up-to-date version. OCR cannot be held responsible for any errors or omissions in these resources.

Though we make every effort to check our resources, there may be contradictions between published support and the specification, so it is important that you always use information in the latest specification. We indicate any specification changes within the document itself, change the version number and provide a summary of the changes. If you do notice a discrepancy between the specification and a resource, please [contact us](#).

Whether you already offer OCR qualifications, are new to OCR or are thinking about switching, you can request more information using our [Expression of Interest form](#).

Please [get in touch](#) if you want to discuss the accessibility of resources we offer to support you in delivering our qualifications.