

**GCE**

**Law**

**H418/01: The legal system and criminal law**

A Level

**Mark Scheme for June 2023**

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

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

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

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## Annotations

Annotation	Meaning
	Very well developed point (WDP)
	Unclear
	Applied point
	Developed point (DP)
	Well developed point (WDP)
	Not answered question
	Not Relevant
	Point
	Repetition
	Sort of
	Point has been noted, but no credit has been given / blank page has been checked for response
	Correct
	Applied
	Spare 1

### **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

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

## Questions 1-2

Assessment Objective:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. <b>8 marks</b>
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## Question 3-4

Assessment Objective:	AO3 1b: Analyse and evaluate legal issues. <b>12 marks</b>
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**Section B**

## Question 5,6,8 and 9

Assessment Objective:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. <b>8 marks</b>
	AO2 1a/1b Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. <b>12 marks</b>

## Questions 7\* and 10\*

Assessment Objective:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. <b>8 marks</b>
	AO3 1a: Analyse and evaluate legal rules and principles. <b>12 marks</b>

Questions that have an asterisk (\*) assess the quality of a candidate's extended response. Level descriptors are identified in the AO3 column in italics.

Answer	Marks	Guidance
<p>1 Describe the role of an Employment Tribunal.</p> <p>Answers <b>may</b> include the following:</p> <p>Role:</p> <ul style="list-style-type: none"> <li>● to act as an independent, unbiased and impartial tribunal</li> <li>● to make a decision based on the evidence provided</li> <li>● to resolve disputes around employment law between employees and employers</li> <li>● to deal with claims from employees who think that their employer has treated them unlawfully</li> <li>● unlawful treatment may include: <ul style="list-style-type: none"> <li>○ unfair dismissal</li> <li>○ discrimination</li> <li>○ unfair deductions from pay</li> <li>○ rights to pay - wages, notice period, holiday pay, minimum wage</li> <li>○ breach of contract</li> <li>○ redundancy</li> </ul> </li> <li>● A finding of unlawful treatment may result in: <ul style="list-style-type: none"> <li>○ compensation</li> <li>○ employer ordered to give the employee their old job back</li> <li>○ re-engagement of the employee in a different role</li> <li>○ satisfactory reference</li> </ul> </li> </ul> <p>Credit any other relevant point(s).</p>	<p><b>8</b> <b>AO1</b></p>	<p><b>Use Levels of Response criteria</b></p> <p><b>Level 4 (7-8 marks)</b> Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.</p> <p><b>Level 3 (5-6 marks)</b> Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.</p> <p><b>Level 2 (3-4 marks)</b> Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.</p> <p><b>Level 1 (1-2 marks)</b> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.</p> <p><b>Level 0 (0 marks)</b> No response or no response worthy of credit.</p>

Answer	Marks	Guidance
<p data-bbox="138 240 1115 309"><b>2</b> Explain the different ways of obtaining privately funded civil advice.</p> <p data-bbox="273 352 779 384">Answers <b>may</b> include the following:</p> <ul data-bbox="273 389 1155 1310" style="list-style-type: none"> <li>● Conditional Fee Arrangements - also known as ‘no win, no fee’ arrangements. Agreement between solicitor and a client that if the solicitor wins, the client pays the agreed legal costs along with a success fee. If the case is lost the client does not pay.</li> <li>● Private funding - using own funds/loans to pay for legal advice</li> <li>● Citizens Advice - an independent charitable organisation offering legal advice on a range of issues</li> <li>● Law Centres Network - Law Centres offer free legal advice over the phone or in person to local residence</li> <li>● Pro Bono e.g. LawWorks &amp; Advocate (formerly the Bar Pro Bono Unit) charities offering free legal advice from lawyers for people who cannot get public funding and cannot afford to pay</li> <li>● Charities e.g. Shelter - housing issues, Gingerbread - advice for family matters</li> <li>● University law schools - many offer pro bono clinics run by students assisted by academic staff/specialist lawyers</li> <li>● Legal Expense Insurance - an additional insurance taken out with, e.g., home or car insurance. Gives access to legal advice and may cover legal costs in certain situations.</li> <li>● Trade Union - provide legal services for their members particularly for workplace issues.</li> </ul> <p data-bbox="273 1350 741 1382">Credit any other relevant point(s)</p>	<p data-bbox="1189 240 1263 309"><b>8</b> <b>AO1</b></p>	<p data-bbox="1301 240 1787 272"><b>Use Levels of Response criteria</b></p> <p data-bbox="1301 312 1592 344"><b>Level 4 (7-8 marks)</b> Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.</p> <p data-bbox="1301 536 1592 568"><b>Level 3 (5-6 marks)</b> Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.</p> <p data-bbox="1301 759 1592 791"><b>Level 2 (3-4 marks)</b> Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.</p> <p data-bbox="1301 983 1592 1015"><b>Level 1 (1-2 marks)</b> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.</p> <p data-bbox="1301 1166 1939 1238"><b>Level 0 (0 marks)</b> No response or no response worthy of credit.</p>



Answer	Marks	Guidance
<p><b>3</b> Discuss the disadvantages of using mediation to solve a civil dispute.</p> <p>Answers <b>may</b> include the following:</p> <ul style="list-style-type: none"> <li>● Attendance at a mediation meeting is not compulsory - one party may simply decide not to attend</li> <li>● Weaker parties may not be able to stand up for their rights and may be pressured into compromising</li> <li>● There are no disclosure rules and one or both parties may withhold important information</li> <li>● Skilled mediators can be very expensive</li> <li>● Using unskilled mediators may result in an unproductive mediation meeting</li> <li>● There is no guarantee that the dispute will be resolved and may go on for a very long time</li> <li>● Mediation may not work unless both parties co-operate and are committed to reaching a compromise</li> <li>● Settlements are often lower than those awarded by the courts</li> <li>● Agreements cannot be enforced, there is no pressure to adhere to the compromise</li> </ul> <p>Credit any other relevant point(s)</p>	<p><b>12</b> <b>AO3</b> <b>1b</b></p>	<p><b>Use Levels of Response criteria</b></p> <p><b>Level 4 (10-12 marks)</b> Excellent analysis and evaluation of a wide range of legal concepts and issues. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed.</p> <p><b>Level 3 (7-9 marks)</b> 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><b>Level 2 (4-6 marks)</b> 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><b>Level 1 (1-3 marks)</b> Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal.</p> <p><b>Level 0 (0 marks)</b> No response or no response worthy of credit.</p>

Answer	Marks	Guidance
<p data-bbox="138 240 976 276">4 Discuss the advantages of judicial independence.</p> <p data-bbox="275 320 779 355">Answers <b>may</b> include the following:</p> <ul data-bbox="275 395 1128 927" style="list-style-type: none"> <li>● Judicial independence is a vital element of a democracy</li> <li>● Allows judges to be free to exercise their judicial powers without interference from external and improper pressure e.g. the state, media and other powerful people/organisations</li> <li>● Judicial independence allows for the rule of law to be applied - cases will be decided solely on the evidence presented in court and in accordance with law</li> <li>● Allows judges to make unpopular decisions</li> <li>● Allows judges to protect citizens against unlawful acts of the government</li> <li>● Has resulted in judges being appointed on merit rather than political bias and/or secrecy</li> <li>● Allows for public confidence in judicial decision making</li> </ul> <p data-bbox="275 1002 741 1037">Credit any other relevant point(s)</p>	<p data-bbox="1205 240 1263 347"><b>12</b> <b>AO3</b> <b>1b</b></p>	<p data-bbox="1301 240 1787 276"><b>Use Levels of Response criteria</b></p> <p data-bbox="1301 316 1626 351"><b>Level 4 (10-12 marks)</b></p> <p data-bbox="1301 355 2114 496">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 data-bbox="1301 536 1592 571"><b>Level 3 (7-9 marks)</b></p> <p data-bbox="1301 576 2123 716">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 data-bbox="1301 756 1592 791"><b>Level 2 (4-6 marks)</b></p> <p data-bbox="1301 796 2092 936">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 data-bbox="1301 976 1592 1011"><b>Level 1 (1-3 marks)</b></p> <p data-bbox="1301 1016 2128 1125">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 data-bbox="1301 1165 1563 1200"><b>Level 0 (0 marks)</b></p> <p data-bbox="1301 1204 1939 1240">No response or no response worthy of credit.</p>

5. Advise whether Yana is criminally liable for theft.

<b>Assessment Objectives</b>	<b>AO1:</b> Demonstrate knowledge and understanding of the English legal system and legal rules and principles. <b>8 marks.</b> <b>AO2:</b> Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. <b>12 marks.</b>
<b>Additional Guidance</b>	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

### AO1 Indicative content

Answers may include:

Define and explain theft – charged under Theft Act 1968:

- s1 – dishonest appropriation of property belonging to another with intention to deprive other of it
- s3 – appropriation – any assumption of any of rights of owner – *Lawrence, Morris, Gomez*
- s4 – property – can be tangible or intangible - *Oxford v Moss, R v Marshall, s.4(3)*
- s5 – belonging to another – ownership, possession, or control – *R v Turner, Ricketts v Basildon Magistrates, R v Woodman*
- s2 – dishonesty: D's behaviour will not be considered dishonest if:
  - s2(1)(a) – defendant not dishonest if honestly believe they have legal right to property
  - s2(1)(b) – defendant not dishonest if honestly believe owner would consent – *Holden*
  - s2(1)(c) – defendant not dishonest if honestly believe owner cannot be found having taken reasonable steps – *Small*;
- If none of above apply the jury apply common sense view or the test established in *Ivey v Genting Casinos (2017)*, confirmed in *Barton and Booth (2020)*
- s6 – intention to permanently deprive – to take forever or for a period equivalent to outright taking – *Lloyd, Velumyl*

Credit any other relevant point(s).

**AO2 Indicative content**

Answers may include:

In the case of Yana taking the extra cakes:

- *Actus reus* exists as she assumes the rights to the extra two cakes, which is property belonging to another
- *Mens rea* exists as she knows she is only supposed to take 'one' cake not three and an ordinary decent member of society would think this as dishonest and there is intention to permanently deprive

In the case of Yana taking the packet of sandwiches:

- *Actus reus* exists as she assumes the rights of the owner by taking the sandwiches and eating them
- The sandwiches are property, and the shop would still retain possession of the sandwiches until they are collected by the council
- *Men rea*; Yana could argue that the shop might consent to the taking of the sandwiches as the sandwiches have been left outside for the bin collection **OR** the ordinary decent member of society *would not* think this is dishonest because the sandwiches have been discarded
- Alternatively, the ordinary decent member of society *would* think this is dishonest
- She intends to permanently deprive.

In the case of Yana taking the single rose:

- *Actus reus* exists as she assumes the rights of the owner by picking the flowers
- The flowers are not growing wild and are regarded as property and belong to another
- *Mens rea*; Yana would be seen as dishonest by the current standards of ordinary people and intended to permanently deprive the garden owner of the roses.

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
<b>Level 4</b>	<ul style="list-style-type: none"> <li>Excellent knowledge and understanding of the English legal system, rules and principles.</li> <li>The response is accurate, fully developed and detailed.</li> <li>There will be excellent citation of fully relevant case law.</li> </ul>	<b>7-8</b>	<ul style="list-style-type: none"> <li>Excellent application of legal rules to a given scenario.</li> <li>Excellent presentation of a legal argument which is accurate, fully developed and detailed.</li> <li>Fully appropriate legal terminology is used.</li> </ul>	<b>10-12</b>
<b>Level 3</b>	<ul style="list-style-type: none"> <li>Good knowledge and understanding of the English legal system, rules and principles.</li> <li>The response is detailed, but not fully developed in places.</li> <li>There will be good citation of mostly relevant case law.</li> </ul>	<b>5-6</b>	<ul style="list-style-type: none"> <li>Good application of legal rules to a given scenario.</li> <li>Good presentation of a legal argument which is detailed but not fully developed in places.</li> <li>Appropriate legal terminology is used.</li> </ul>	<b>7-9</b>
<b>Level 2</b>	<ul style="list-style-type: none"> <li>Basic knowledge and understanding of the English legal system, rules and principles.</li> <li>The response may lack detail in places and is partially developed.</li> <li>There will be some reference to case law.</li> </ul>	<b>3-4</b>	<ul style="list-style-type: none"> <li>Basic application of legal rules to a given scenario.</li> <li>Basic presentation of a legal argument which may lack detail in places and is partially developed.</li> <li>Some appropriate legal terminology is used.</li> </ul>	<b>4-6</b>
<b>Level 1</b>	<ul style="list-style-type: none"> <li>Limited knowledge and understanding of the English legal system, rules and principles.</li> <li>The response will have minimal detail.</li> <li>Citation of case law is limited.</li> </ul>	<b>1-2</b>	<ul style="list-style-type: none"> <li>Limited application of legal rules to a given scenario.</li> <li>Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear.</li> <li>Minimal legal terminology is used.</li> </ul>	<b>1-3</b>
<b>Level 0</b>	No response or no response worthy of credit.	<b>0</b>	No response or no response worthy of credit.	<b>0</b>

6. Advise whether Charlie can avoid liability for any crime using the defence of duress by threats. **You do not need to discuss the specific crimes.**

<b>Assessment Objectives</b>	<b>AO1:</b> Demonstrate knowledge and understanding of the English legal system and legal rules and principles. <b>8 marks.</b> <b>AO2:</b> Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. <b>12 marks.</b>
<b>Additional Guidance</b>	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

### AO1 Indicative content

Answers **MAY** include:

Duress by threats - where the threat of death or serious personal violence is so great that it overbears the ordinary powers of human resistance - *A-G v Whelan*. Full defence. Jury decides whether the threat was sufficiently serious.

Test for Duress (*Hasan*):

- There must be a threat to cause death or serious injury - *Howe, R v Valderrama-Vega*
- The threat must be directed against the D or their immediate family or someone close to them - *Ortiz, Wright*
- The D must have acted reasonably in the light of the threats - The threat must be so great as to overbear the ordinary powers of human resistance. This comes from the case of *Graham* and is split into two aspects
  - Was the defendant compelled to act as he did because he reasonably believed he had good cause to fear serious injury or death?)
  - If so, would a sober person of reasonable firmness, sharing the characteristics of the accused have responded in the same way? The jury is allowed to take some of the D's characteristics into account - *R v Bowen*
- The threats relate directly to the crime committed by the D - *R v Cole*
- There was no evasive action the D could have taken - *R v Gill, R v Hudson v Taylor*
- The threat must be immediate or almost immediate *R v Hasan*
- The D cannot use the defence if they voluntarily laid themselves open to the threats, *R v Sharp, Hasan*.

Credit any other relevant point(s)

**AO2 Indicative content**

Answers **MAY** include:

In the overall case of duress by threats to commit the bank robbery:

- The crime committed (robbery) is neither murder nor attempted murder, so this part is satisfied
- There is a threat of serious injury made by Ben
- That the threat is not made to Charlie himself, but his grandmother
- Graham 1 - Whether Charlie was compelled to act as he did because he himself thought his life, or someone he was responsible for, was in danger
- Graham 2 - Whether a sober person of reasonable firmness sharing Charlie's characteristics would have responded in the same way following Ben's threat
- That there is a nexus between the crime nominated by Ben himself (robbery) and the threat
- That the threat to break his grandmother's legs was not 'immediate' or 'almost immediate'
- That the actual crime (robbery) was not committed
- Charlie voluntarily associated with a violent gang he would be unlikely to be allowed the defence even though he was intending to leave the gang
- That there is no nexus between the crime nominated by Ben himself (robbery) when Charlie decided, independently, to steal and sell the car for £5000

Reach a reasoned conclusion in each instance.

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
<b>Level 4</b>	<ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system, rules and principles.</li> <li>• The response is accurate, fully developed and detailed.</li> <li>• There will be excellent citation of fully relevant case law.</li> </ul>	<b>7-8</b>	<ul style="list-style-type: none"> <li>• Excellent application of legal rules to a given scenario.</li> <li>• Excellent presentation of a legal argument which is accurate, fully developed and detailed.</li> <li>• Fully appropriate legal terminology is used.</li> </ul>	<b>10-12</b>
<b>Level 3</b>	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system, rules and principles.</li> <li>• The response is detailed, but not fully developed in places.</li> <li>• There will be good citation of mostly relevant case law.</li> </ul>	<b>5-6</b>	<ul style="list-style-type: none"> <li>• Good application of legal rules to a given scenario.</li> <li>• Good presentation of a legal argument which is detailed but not fully developed in places.</li> <li>• Appropriate legal terminology is used.</li> </ul>	<b>7-9</b>
<b>Level 2</b>	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the English legal system, rules and principles.</li> <li>• The response may lack detail in places and is partially developed.</li> <li>• There will be some reference to case law.</li> </ul>	<b>3-4</b>	<ul style="list-style-type: none"> <li>• Basic application of legal rules to a given scenario.</li> <li>• Basic presentation of a legal argument which may lack detail in places and is partially developed.</li> <li>• Some appropriate legal terminology is used.</li> </ul>	<b>4-6</b>
<b>Level 1</b>	<ul style="list-style-type: none"> <li>• Limited knowledge and understanding of the English legal system, rules and principles.</li> <li>• The response will have minimal detail.</li> <li>• Citation of case law is limited.</li> </ul>	<b>1-2</b>	<ul style="list-style-type: none"> <li>• Limited application of legal rules to a given scenario.</li> <li>• Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear.</li> <li>• Minimal legal terminology is used.</li> </ul>	<b>1-3</b>
<b>Level 0</b>	No response or no response worthy of credit.	<b>0</b>	No response or no response worthy of credit.	<b>0</b>



7\* “The defence of consent is not fit for purpose in modern times and needs to be reformed urgently.’ Discuss the extent to which this statement is accurate.

Assessment Objectives	<b>AO1:</b> Demonstrate knowledge and understanding of the English legal system and legal rules and principles. <b>8 marks.</b> <b>AO3 1a:</b> Analyse and evaluate legal rules and principles. <b>12 marks.</b>
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 the common law defence – implied agreement to all batteries; for injuries above battery – must be ‘a good reason’

Explain that everyday life pre-supposes some limiting of the defence *Collins v Wilcock*.

Explain the elements of consent:

- Must be not by deception – *Tabassum, Richardson*
- Not through coercion or fear - *Olugboja*
- Must be fully informed – *Dica*.
- Can be implied – *Wilson v Pringle*
- An adult must have the capacity to consent - *Burrell v Harmer*
- Explain operation of defence – use of certain exceptions or ‘good reasons’– surgery, tattooing/piercing, sports, male circumcision – *AG Ref (No 6 of 1980)*, but not in extreme situations such as body modification (*R v BM*)
- Can be defence in physical contact sports if within the rules of the game – *Billingshurst, Barnes*
- Influenced by public interest especially sexual activity – *Brown, Wilson, Emmett*, but not in extreme situations
- Horseplay can give rise to defence – *Jones, Aitken*
- No defence in relation to murder/euthanasia – *Pretty, Nicklinson*

Credit any other relevant point(s).

**AO3 Indicative content**

Answers **MAY include:**

Discuss any or all of the following areas in the context of suitability of 'fit for purpose' in a modern society:

Discuss any or all the following areas in the context of suitability of 'fit for purpose' in a modern society:

- Difficulties in striking a balance between individual freedom and social paternalism in a changing modern European society. Does social paternalism go too far and is there a conflict with the Human Rights Act 1998 and the provisions of the ECHR? There needs to be a sensible balance between individual freedom and social paternalism
- Sport – problems delineating inside and outside the rules of the game and inconsistency in that some sports involve deliberate harm which is allowed and yet in others less than deliberate harm constitutes an offence – compare football with boxing/martial arts. But, there is no need to criminalise actions unnecessarily as this is bad for activities seen to be socially useful.
- Social utility issues in surgical operations – therapeutic/non-therapeutic – lifesaving versus beauty/body adornment - what can be consented to? What should be consented to? There is a need for balance and to look at both physical and psychological benefits. There is a reasonably good balance because you expressly consent and risks are explained and Doctor's make decisions based on best interests given the circumstances when, for example, the patient is unconscious.
- Policy issues involving and changing attitudes towards sexual activity/offences and horseplay – sadomasochism, 'prank' TV shows. Slow development through the common law is useful to respond to changing society.
- Consider the recent problem of consent by coercion in employment situations as evidenced by the #MeToo movement
- Sexual offences – not easy to decide on informed consent and cases suggest courts and juries find it hard
- Horseplay – decisions can seem hard to justify, especially when looked at alongside sexual offences
- Consider and comment upon any law reform proposals and whether Parliament should legislate and, if so, in what form?
- Difficulties surrounding euthanasia

**REFORM suggestions:**

- Proposals for reform on certain aspects such as in relation to euthanasia have been made by a wide range of campaign organisations.

Law Commission 1995 report into consent

- Commission has expressed several views on the rules surrounding consent, as part of different reviews

- In *Consent in sexual offences*, written in response to the Government consultation, key recommendation was that *subsisting, free and genuine agreement should count as consent to a sexual act by another*. As a result, the Sexual Offences Act 2003 was enacted but problems still exist in some cases
- A 1994 consultation paper entitled *Consent and Offences Against the Person* discusses the view that a person's body is their own and that the law has no place in dictating what can be done with it – that attitude has not been adopted. The Law Commission highlighting illegal drugs as an example where the law limits complete bodily freedom.
- The 1994 paper agrees law should set a limit to the injury to which a person may consent but states that certain special categories should be exempt, such as ritual circumcision, ear-piercing, tattooing and dangerous exhibitions which have been adopted today.

Reach any sensible conclusion.

Credit any other relevant point(s).

	AO1	Mark	AO3 1a	Mark
<b>Level 4</b>	<ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system, rules and principles.</li> <li>• The response is accurate, fully developed and detailed.</li> <li>• There will be excellent citation of fully relevant case law.</li> </ul>	<b>7-8</b>	<ul style="list-style-type: none"> <li>• Excellent analysis and evaluation of a wide range of legal rules and principles.</li> <li>• The response is wide ranging and has a well sustained focus on the question.</li> <li>• The key points are fully discussed and fully developed to reach a valid conclusion.</li> </ul> <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>	<b>10-12</b>
<b>Level 3</b>	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system, rules and principles.</li> <li>• The response is detailed, but not fully developed in places.</li> <li>• There will be good citation of mostly relevant case law.</li> </ul>	<b>5-6</b>	<ul style="list-style-type: none"> <li>• Good analysis and evaluation of a range of legal rules and principles.</li> <li>• The response has a mainly consistent focus on the question.</li> <li>• Most of the key points are well discussed and well developed to reach a valid conclusion.</li> </ul> <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>	<b>7-9</b>
<b>Level 2</b>	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the English legal system, rules and principles.</li> <li>• The response may lack detail in places and is partially developed.</li> <li>• There will be some reference to case law.</li> </ul>	<b>3-4</b>	<ul style="list-style-type: none"> <li>• Basic analysis and evaluation of legal rules and principles.</li> <li>• The response is partially focused on the question.</li> <li>• Some of the key points are discussed and partially developed to reach a basic conclusion.</li> </ul> <p><i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i></p>	<b>4-6</b>

<b>Level 1</b>	<ul style="list-style-type: none"> <li>• Limited knowledge and understanding of the English legal system, rules and principles.</li> <li>• The response will have minimal detail.</li> <li>• Citation of case law is limited.</li> </ul>	<b>1–2</b>	<ul style="list-style-type: none"> <li>• Limited analysis of legal rules and principles.</li> <li>• The response has limited focus on the question. Discussion of any key points is minimal.</li> </ul> <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>	<b>1–3</b>
<b>Level 0</b>	No response or no response worthy of credit	<b>0</b>	No response or no response worthy of credit.	<b>0</b>

8. Advise whether Darcie is criminally liable for unlawful act manslaughter

<b>Assessment Objectives</b>	<b>AO1:</b> Demonstrate knowledge and understanding of the English legal system and legal rules and principles. <b>8 marks.</b> <b>AO2:</b> Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. <b>12 marks.</b>
<b>Additional Guidance</b>	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

### AO1 Indicative content

Answers **may** include:

Define and explain unlawful and dangerous act/constructive manslaughter:

- Requires a positive and unlawful act - *Franklin, Mitchell, Larkin, Lamb*
- Unlawful act should be objectively dangerous – *Church, Dawson, Watson*
- Requires a positive act be done intentionally – *Goodfellow, Newbury and Jones, Lamb*
- Requires the *mens rea* of the positive act
- An omission is not enough - *Lowe*
- Reasonable man needs to foresee risk of some harm to some other person but not necessarily harm which results – *Church, Newbury & Jones*
- The act need not be aimed at the actual victim – *Mitchell, England.*
- Chain of causation be intact and death result
- Factual causation 'but for' test - the consequence would not have happened 'but for' the defendant's conduct - *R v White, R v Pagett.*
- Legal causation. D's acts must make more than a minimal contribution to V's death - *R v Kimsey.* D's acts to be operative and substantial cause of harm – *Smith, Cheshire*
- Chain of causation: novus Actus Interveniens:
  - Medical intervention - *R v Cheshire, R v Jordan*
  - Victim's own act - *R v Roberts, R v Williams, Dear, Majoram.*

Credit any other relevant point(s)

**AO2 Indicative content**

Answers **MAY**:

- There is a positive act - breaking in to remove the gas boiler
- The act is unlawful - burglary/criminal damage
- Removing a gas boiler would be considered an objectively dangerous act
- The act would be dangerous from the perspective of the sober and reasonable person
- The attempted removal of the gas boiler was an intentional act. Darcie intends to steal the boiler and she recklessly damages the main gas pipe.
- A reasonable person would see a risk of at least some harm from the escaping gas
- Darcie is the factual cause of Emma's death - the explosion would not have happened 'but for' Darcie's conduct
- Darcie is the legal cause of Emma's death
- Darcie's actions make more than a minimal cause of Emma's death
- Darcie's act was the operative and substantial cause of Emma's death
- Emma's act of lighting a cigarette may be seen as an act by the victim which breaks the chain of causation - daftness test, alternatively, it could be seen as reasonably foreseeable in the circumstances.
- Darcie is criminally liable for unlawful act manslaughter **OR** Darcie is not criminally liable for unlawful act manslaughter.

Credit any other relevant point(s)

	AO1	Mark	AO2 1a/1b	Mark
<b>Level 4</b>	<ul style="list-style-type: none"> <li>Excellent knowledge and understanding of the English legal system, rules and principles.</li> <li>The response is accurate, fully developed and detailed.</li> <li>There will be excellent citation of fully relevant case law.</li> </ul>	<b>7-8</b>	<ul style="list-style-type: none"> <li>Excellent application of legal rules to a given scenario.</li> <li>Excellent presentation of a legal argument which is accurate, fully developed and detailed.</li> <li>Fully appropriate legal terminology is used.</li> </ul>	<b>10-12</b>
<b>Level 3</b>	<ul style="list-style-type: none"> <li>Good knowledge and understanding of the English legal system, rules and principles.</li> <li>The response is detailed, but not fully developed in places.</li> <li>There will be good citation of mostly relevant case law.</li> </ul>	<b>5-6</b>	<ul style="list-style-type: none"> <li>Good application of legal rules to a given scenario.</li> <li>Good presentation of a legal argument which is detailed but not fully developed in places.</li> <li>Appropriate legal terminology is used.</li> </ul>	<b>7-9</b>
<b>Level 2</b>	<ul style="list-style-type: none"> <li>Basic knowledge and understanding of the English legal system, rules and principles.</li> <li>The response may lack detail in places and is partially developed.</li> <li>There will be some reference to case law.</li> </ul>	<b>3-4</b>	<ul style="list-style-type: none"> <li>Basic application of legal rules to a given scenario.</li> <li>Basic presentation of a legal argument which may lack detail in places and is partially developed.</li> <li>Some appropriate legal terminology is used.</li> </ul>	<b>4-6</b>
<b>Level 1</b>	<ul style="list-style-type: none"> <li>Limited knowledge and understanding of the English legal system, rules and principles.</li> <li>The response will have minimal detail.</li> </ul> <p>Citation of case law is limited.</p>	<b>1-2</b>	<ul style="list-style-type: none"> <li>Limited application of legal rules to a given scenario.</li> <li>Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear.</li> </ul> <p>Minimal legal terminology is used.</p>	<b>1-3</b>
<b>Level 0</b>	No response or no response worthy of credit.	<b>0</b>	No response or no response worthy of credit.	<b>0</b>



9. Advise whether Henry is criminally liable for any non-fatal offences against the person and whether they can use the defence of intoxication.

<b>Assessment Objectives</b>	<p><b>AO1:</b> Demonstrate knowledge and understanding of the English legal system and legal rules and principles. <b>8 marks.</b></p> <p><b>AO2:</b> Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. <b>12 marks.</b></p>
<b>Additional Guidance</b>	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

### AO1 Indicative content

Answers **MAY**:

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

- *Actus reus* - making victim apprehend immediate and unlawful personal force/violence, *Collins v Wilcock, Ireland, Tuberville v Savage, Logden v DPP, Smith v Woking MPC*
- *Mens rea* - intention or subjective recklessness, *Venna*

Define and explain unlawful and malicious wounding or inflicting 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* is foresight of some harm but not necessarily serious harm – *Grimshaw, Parmenter*

Define and explain unlawful and malicious wounding or causing grievous bodily harm with intent – s18 Offences Against the Person Act 1861:

- *Actus reus* causing a wound which breaks all layers of skin – *Eisenhower*
- Or serious harm – *Smith*
- *Mens rea* is intention to do serious harm - *Morrison. Mohan*

Define and explain voluntary intoxication:

- Distinction in law between crimes of specific and basic intent – *Majewski*
- Voluntary intoxication provides evidence of the *mens rea* enough for basic intent crimes – *Majewski*
- Voluntary intoxication can provide evidence of a lack of *mens rea* needed for a specific intent offence – *Beard, Sheehan and Moore, Lipman* but only likely to happen where the intoxication was extreme and rendered the accused incapable of forming the necessary intent – *Gallagher*
- A drunken intent is nevertheless intent *Sheehan, Kingston*

Credit any other relevant point(s).

### AO2 Indicative content

Answers **MAY**:

In the case of Felix asking Henry to move:

- *Actus reus* may exist as Henry's actions could be seen as aggressive and could make Felix apprehend immediate and unlawful personal violence
- Henry's words, however, appear to negate the assault because he tells Felix he will not be carrying out the threat as he is being watched
- *Mens rea* exists as Henry's words are intentional or are at least subjectively reckless

In the case of Henry thrusting his bat in Felix's face.

- *Actus reus* exists as the broken jaw and disfigurement would constitute GBH (s18 or s20)
- *Mens rea* exists as Henry knows that Felix is close by and intends to strike him with the bat
- Thrusting the bat in his face shows an intention to cause serious harm and will be enough for a s18 offence

In the case of Henry consuming the alcoholic drinks:

- Henry has intentionally consumed five large whiskeys and is voluntarily intoxicated through alcohol
- If he is deemed to be too drunk to know what he is doing, he may be able to use this as a defence to the specific intent crime of s18 offence.
- However, Henry appears to still have the mens rea despite the intoxication. He knows what he is doing when he sticks out the bat.
- Alternatively, he could be guilty of the basic intent crime of s20 based on his voluntary intoxication

Reach a reasoned conclusion in each instance.

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
<b>Level 4</b>	<ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system, rules and principles.</li> <li>• The response is accurate, fully developed and detailed.</li> <li>• There will be excellent citation of fully relevant case law.</li> </ul>	<b>7-8</b>	<ul style="list-style-type: none"> <li>• Excellent application of legal rules to a given scenario.</li> <li>• Excellent presentation of a legal argument which is accurate, fully developed and detailed.</li> <li>• Fully appropriate legal terminology is used.</li> </ul>	<b>10-12</b>
<b>Level 3</b>	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system, rules and principles.</li> <li>• The response is detailed, but not fully developed in places.</li> <li>• There will be good citation of mostly relevant case law.</li> </ul>	<b>5-6</b>	<ul style="list-style-type: none"> <li>• Good application of legal rules to a given scenario.</li> <li>• Good presentation of a legal argument which is detailed but not fully developed in places.</li> <li>• Appropriate legal terminology is used.</li> </ul>	<b>7-9</b>
<b>Level 2</b>	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the English legal system, rules and principles.</li> <li>• The response may lack detail in places and is partially developed.</li> <li>• There will be some reference to case law.</li> </ul>	<b>3-4</b>	<ul style="list-style-type: none"> <li>• Basic application of legal rules to a given scenario.</li> <li>• Basic presentation of a legal argument which may lack detail in places and is partially developed.</li> <li>• Some appropriate legal terminology is used.</li> </ul>	<b>4-6</b>
<b>Level 1</b>	<ul style="list-style-type: none"> <li>• Limited knowledge and understanding of the English legal system, rules and principles.</li> <li>• The response will have minimal detail.</li> <li>• Citation of case law is limited.</li> </ul>	<b>1-2</b>	<ul style="list-style-type: none"> <li>• Limited application of legal rules to a given scenario.</li> <li>• Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear.</li> <li>• Minimal legal terminology is used.</li> </ul>	<b>1-3</b>
<b>Level 0</b>	No response or no response worthy of credit.	<b>0</b>	No response or no response worthy of credit.	<b>0</b>

10\* 'The defence of consent is not fit for purpose in modern times and needs to be reformed urgently.' Discuss the extent to which this statement is accurate.

**As per question 7.**

## Assessment Objectives Grid

Questions	AO1	AO2 1a/1b**	AO3 1a	AO3 1b	Total
1-2	8	0	0	0	8
3-4	0	0	0	12	12
5 or 8	8	12	0	0	20
6 or 9	8	12	0	0	20
7* or 10*	8	0	12	0	20
<b>Total</b>	<b>32</b>	<b>24</b>	<b>12</b>	<b>12</b>	<b>80</b>

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

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