



Oxford Cambridge and RSA

GCE

Law

H415/01: The legal system and criminal law

Advanced GCE

Mark Scheme for Autumn 2021

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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

12. Subject Specific Marking Instructions

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

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. 10 marks
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Question 3-4

Assessment Objective:	AO3 1b: Analyse and evaluate legal issues. 15 marks
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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. 10 marks
	AO2 1a/1b Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks

Questions **7*** and **10***

Assessment Objective:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks AO3 1a: Analyse and evaluate legal rules and principles. 15 marks
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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 Explain the training required to become a solicitor.</p> <p>Answers may include the following:</p> <p>Graduate training - Legal Practice Course:</p> <ul style="list-style-type: none"> • Full or part-time providing a general foundation for practice. <ul style="list-style-type: none"> ○ Two stages: <ul style="list-style-type: none"> ▪ Stage 1 – includes the essential practice areas of; Business Law and Practice, Property Law and Practice and Litigation, together with the Course Skills, Professional Conduct and Regulation, Taxation and Wills and Administration of Estates ▪ Stage 2 – three Vocational Electives for example; civil and criminal litigation and Property (commercial and domestic) • Training contract: <ul style="list-style-type: none"> ○ Two-year supervised training period carried out in a law firm or in house in a large SRA (Solicitors Regulatory Authority) approved organisation. ○ Trainees will work in different areas of law - 'seats' including both contentious and non-contentious areas. • Complete the Professional Skills Course. • Apply to be added to the SRA register of solicitors for England and Wales - the roll. <p>Non-graduate training - Solicitor apprenticeship</p> <ul style="list-style-type: none"> • Six-year programme integrating a law degree and Legal Practice Course. 	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9-10 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 (6-8 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 (3-5 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
<ul style="list-style-type: none"> • Combines work and training within a law firm. • Apprentices learn law and legal practice and gain competence in legal skills, commercial skills and professional conduct. <p>Non-graduate training- through the CILEx route</p> <p>Alternatively - the training to become a solicitor requires completion of the Solicitors Qualifying Examination (SQE)</p> <p><u>Solicitors Qualifying Examination (SQE)</u></p> <p><u>SQE1: Functioning Legal Knowledge:</u> Functioning Legal Knowledge is split into two parts. All aspects of the two are compulsory.</p> <ul style="list-style-type: none"> • Part 1: six topics assessed including, inter alia, Dispute Resolution, Contract , Tort • Part 2: six topics assessed including, inter alia, Criminal Law and Practice and Land Law • Ethics and Professional Conduct examined across the two <p><u>SQE2 - Practical Legal Skills Assessments:</u> Practical Legal Skills assessment is split into two parts. All aspects of the two are compulsory.</p> <ul style="list-style-type: none"> • Six legal skills including, inter alia, Advocacy, Legal Research and Legal drafting • Five practice areas including, inter alia, Criminal Litigation, Dispute Resolution and Property Practice <p><u>Qualifying Work Experience (QWE)</u></p> <ul style="list-style-type: none"> • Minimum of two years' full-time (or equivalent) qualifying work experience. This can take place during or after SQE assessments. • Must complete before being admitted to the roll of solicitors. • Options for QWE include: <ul style="list-style-type: none"> ○ Training contract at recognised firm/business ○ Law degree placement 		

Answer	Marks	Guidance
<ul style="list-style-type: none"> ○ Volunteering in a legal advice centre ○ Working as a paralegal. ○ Experience from a previous job or role <p>NOTE: Page 5 'OCR A Level Law Specification H418 'Two-year rule. While learners are encouraged to be aware of the changing nature of law, they are not required to be familiar with innovations coming into effect in the two years immediately preceding the examination. The training process set out above was correct at the time this examination was set. From September 2021 training to become a solicitor requires completion of a Solicitors Qualifying Examination. Credit will be awarded for both types of training.</p> <p>Credit any other relevant point(s)</p>		

Answer	Marks	Guidance
<p>2 Describe the routes of appeal available in civil cases.</p> <p>Answers may include the following:</p> <p><u>Grounds/reasons to appeal</u></p> <ul style="list-style-type: none"> • error of law • error of fact • procedural unfairness. <p><u>Three track appeals</u></p> <ul style="list-style-type: none"> • If first heard by a District Judge appeal heard by a Circuit Judge sitting in the County Court. If matter first heard by a Circuit Judge the appeal will be heard by a High Court Judge in the High Court <p><u>High Court Appeal to the Court of Appeal (Civil Division)</u></p> <ul style="list-style-type: none"> • Permission/Leave to appeal required. • Appellant's Notice must be submitted within 21 days of the decision. • 'Leapfrog' appeal directly to the UKSC (United Kingdom Supreme Court). Appeal must involve an issue of national importance or raises issues of sufficient importance to warrant the leapfrog <p><u>Appeal from the Court of Appeal to the UKSC</u></p> <ul style="list-style-type: none"> • Matter must be of national importance • UKSC must give permission/leave <p>Credit any other relevant point(s)</p>	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9-10 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 (6-8 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 (3-5 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 facing a person wanting to join the legal profession.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • Cost of training - the cost of the vocational training to become a solicitor is approximately £15,000 and £18,000 to undertake the vocational training to become a barrister. • Over supply - there has always been an oversupply of students completing vocational and professional training. There is now a greater number of students undertaking CILEX and solicitor apprenticeships further increasing the number of would-be lawyers looking for jobs at the end of training • Professional training opportunities are becoming more difficult to obtain, there are fewer around • Fewer job opportunities: <ul style="list-style-type: none"> ○ The growth of on-line dispute resolution and technology has resulted in a reduction in need for lawyers to take on what would have previously been 'bread and butter' work. On-line services provide can provide automated advice and on-line documents ○ Disruption to traditional legal practices from a wide range of new providers for example, on-line services, accounting firms. Such 'disruption' is changing the face of the legal profession in the 21st Century. ○ Austerity and cuts in public funding has resulted in less legal aid work available. Firms have cut back 	<p>15 AO3 1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (12-15 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 (8-11 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 (4-7 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
on legal aid work provided and as a result there are less jobs Credit any other relevant point(s)		

Answer	Marks	Guidance
<p>4 Discuss the advantages of using alternative dispute resolution to solve a civil dispute.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • Most types of ADR are non-adversarial, and parties are encouraged to cooperate and compromise. This is better for the parties' relationships and their future. It avoids the winner, loser scenario and avoids, to some extent, bad feelings. • ADR overall is a far cheaper way of dealing with a civil dispute. Whilst there may be some costs, these are unlikely to be as high as court costs • There are specialist ADR companies and organisations that can help advise and guide parties. This allows for a more proactive way of dealing with a civil dispute • ADR tends to be quicker than court hearings. There are fewer delays and waiting for court dates to be set • Most types of ADR can be dealt with quickly without the formality of court. There are no strict rules of disclosure and witnesses making the whole process quicker • ADR is a less stressful way of dealing with a civil matter. Most types of ADR are informal and there is no formal court hearing. • 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 <p>Credit any other relevant point(s)</p>	<p>15 AO3 1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (12-15 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 (8-11 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 (4-7 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>

5. Advise whether Anika or Ben are liable for any non-fatal offences against the person in relation to each other.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 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 common law assault, charged under section 39 Criminal Justice Act 1988:

- Assault – making V apprehend immediate and unlawful personal force accompanied by intention or subjective recklessness – *Collins v Wilcock*, *Venna*, *Ireland*, *Tuberville v Savage*.

Define and explain assault occasioning actual bodily harm, charged under section 47 Offences Against the Person Act 1861:

- *Actus reus* – common assault which occasions actual bodily harm
- 'Any hurt or injury calculated to interfere with the health or comfort of the victim' *Miller*, *Donovan*, *R v T*
- Doesn't need to be permanent but should not be trivial (*Miller*, *Chan-Fook*)
- Harm can be physical or psychological – *Chan-Fook*, *Constanza*
- Can be direct or indirect - *Martin*, *Halstead*.
- *Mens rea* – intention or subjective recklessness for the battery– D need not foresee the level of injury - *Roberts*, *Savage*

Define and explain grievous bodily harm, charged under section 18 Offences Against the Person Act 1861:

- *Actus reus* – unlawfully wound or cause grievous bodily harm on any person
- *Mens rea* – an intention to cause grievous bodily harm

Credit any other relevant point(s).

AO2 Indicative content

Answers **MAY** include the following:

In the case of Ben shouting at Anika:

- *Actus reus*: The act of shouting/demanding, "...or there'll be trouble", could make Anika apprehend immediate and unlawful force, suggesting a charge of technical assault
- Ben's words may or may not be sufficient for an assault as a condition may be attached
- *Mens rea*: Ben is at least subjectively reckless.

In the case of Anika breaking Ben's thumb:

- *Actus reus*: Shutting the door is sufficient for battery as an application of unlawful force
- The broken thumb is more serious than a battery and would be deemed 'any hurt or injury' that interfered with the 'health and comfort' of Ben
- *Mens rea*: Anika *intends to assault Ben by giving him a fright and will be guilty of ABH as she does not need to foresee the injury to Ben's thumb.*

In the case of Anika breaking Ben's back:

- *Actus reus*: breaking Ben's back is grievous harm as it is "really serious" - by pushing Ben from the scaffolding, she caused the harm
- *Mens rea*: clearly Anika has intent as it is her main aim or purpose to seriously injure Ben by pushing him from the second-floor scaffolding.

Reach a reasoned conclusion in each instance.

Credit any other relevant point(s)

	AO1	Mark	AO2 1a/1b	Mark
Level 4	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.	9–10	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.	12–15
Level 3	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.	6–8	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.	8–11
Level 2	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. Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	3–5	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.	4–7
Level 1	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	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 Charlie is liable for the murder of Leo and Eve.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 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 common law offence of murder:

Define the *actus reus* of murder:

- Causing death of a human being
- Under the King or Queen's Peace
- Within any country of the realm
- Causing death in fact and law of a human being

Define and explain the two types of causation:

- Causation in fact – defendant, 'but for' their actions, V would have lived *White, Pagett*
- Causation in law – D is more than a minimal contribution to death of victim – *Kimsey*
- Defendant's act must be the operative and substantial cause of harm – *Smith, Cheshire*.
- Chain may be broken, only by an intervening act (Novus Actus Interveniens).

Define the *mens rea* of murder:

- 'Malice aforethought' – either an intent to kill (express malice aforethought); or, an intent to cause grievous bodily harm (implied malice aforethought) - *Moloney*
- Intent - either direct intent – *Mohan*, or, indirect/oblique intent – *Nedrick, Woollin, Matthews and Alleyne*

- Transferred malice is when the mens rea can be transferred from the intended victim to the unintended victim – *Latimer, Pembliton*

Credit any other relevant point(s)

AO2 Indicative content

Answers **MAY** include the following:

In the case of Charlie and the murder of Leo:

The *actus reus* of murder appears likely to be proven:

- Charlie puts poison in Leo's water - which he takes to bed with him every night. Leo drinks the water which is the cause of his death both factually and legally
- Leo is a human being and 'dies in his sleep' which clearly means brain death
- Charlie is not acting in a military capacity and is therefore under the Queen's Peace

The *mens rea* of murder appears to be proven:

- It was Charlie's direct intent, his main aim, purpose or desire to kill, or his true desire to bring about the consequences of the death of his brother by poisoning him.

In the case of Charlie and the murder of Eve:

The *actus reus* appears likely to be proven:

- Charlie puts poison in Leo's water which his mother drinks and is the cause of her death both factually and legally
- Eve is a human being and dies 'later that day' which clearly means brain death
- Charlie is not acting in a military capacity and is therefore under the Queen's Peace

The *mens rea* appears more difficult to be proven:

- There was clearly no intent to kill his mother, as it was not Charlie's aim, purpose or desire to kill, or his true desire to bring about the consequences of her death.
- In the absence of direct intent, it may be possible to prove indirect/oblique intent – the jury would be entitled to find Charlie's intent for a murder charge, if death or serious bodily harm had been a virtual certainty and that he appreciated that was the case, based on all the evidence. On the facts this is unlikely as he doesn't foresee Eve drinking the poisoned drink.

It could be argued that the mens rea is transferred from Leo to Eve and that Charlie is guilty of two counts of murder.

Credit any well argued, well supported conclusion on indirect intent.

Reach a reasoned conclusion in each instance.
Credit any other relevant point(s)

	AO1	Mark	AO2 1a/1b	Mark
Level 4	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.	9–10	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.	12–15
Level 3	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.	6–8	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.	8–11
Level 2	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. Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	3–5	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.	4–7
Level 1	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	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
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7* 'The defence of duress by threat is essential but, in its current form, too restrictive'. 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. 10 marks. AO3 1a: Analyse and evaluate legal rules and principles. 15 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 the defence of duress:

- Defendant acts under pressure and, if successful, the effect is acquittal
- Found in common law
- Standard test governs the application of the defence, *Graham, Hasan*

Explain the elements of the defence:

- Must be a threat of death or serious bodily harm, *Martin*
- to the defendant
- or someone close to them, *Valderrama-Vega*
- D must behave like the 'sober person of reasonable firmness' - *Graham*
- Any self-induced characteristics must be excluded, and other characteristics may be excluded, *Bowen, Flatt*
- The threat should be 'immediate or almost immediate' *Hasan*
- The defendant must be judged by the threat as they perceived it to be, *Safi*
- There must be nexus between what D is instructed to do and what the defendant does, *Cole*
- No defence if the charge is murder or attempted murder, *Howe, Gotts*

- No defence if the defendant voluntarily associates with a criminal gang knowing the nature of what the gang does, *Sharp*, *Hasan*.
Defence is available if D did not know of gang's propensity for violence, *Shepherd*

Explain any proposals for reform for the defence – Law Commission Report on General Defences 1977

Credit any other relevant point(s)

AO3 Indicative content

Answers **MAY**:

Discuss any or all of the following areas in the context of the defence being essential but too restrictive:

- The need to take account that defendants act very differently under extreme pressure
- The large set of elements that a defendant must prove in order to successfully raise the defence
- The need for humanity in the law if it is to be seen as just and effective – a 'concession to human frailty'
- Problems of proof – how can juries put themselves in the place of the defendant when trying to decide on the defence?
- The issue of timing between the threat and committing the crime - the requirement of seeking help or avoiding committing the crime is ambiguous
- Inconsistencies with other defences – especially loss of self-control which offers a partial defence to murder whereas duress is not available in relation to murder
- Inconsistency in that the defence is not available to murder and yet it is available if the charge is section 18 OAPA 1861
- Issues relating to the type of threat and to whom it is made – how easy it is to draw such lines if the pressure is overbearing to the individual concerned?
- Is the defence driven by policy particularly with regard to murder and association with known criminals and terrorists?

Discuss proposals for change/reform and any impact they may have if enacted

Reach any sensible conclusion in relation to the question

Credit any other relevant point(s).

	AO1	Mark	AO3 1a	Mark
Level 4	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.	9–10	Excellent analysis and evaluation of a wide range of legal rules and principles. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion. <i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i>	12–15
Level 3	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.	6–8	Good analysis and evaluation of a range of legal rules and principles. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion. <i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i>	8–11
Level 2	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. Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	3–5	Basic analysis and evaluation of legal rules and principles. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion. <i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i>	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The	1–2	Limited analysis of legal rules and principles. The response has limited focus on the question.	1–3

	response will have minimal detail. Citation of case law is limited.		Discussion of any key points is minimal. <i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i>	
Level 0	No response or no response worthy of credit	0	No response or no response worthy of credit.	0

8. Advise whether James is criminally liable for burglary and whether Nina is liable for burglary and robbery.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 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 burglary – section 9 Theft Act 1968:

- *Actus reus:* Section 9(1)(a) – entry of a building or part of a building as a trespasser with the intention to steal, inflict GBH or cause unlawful damage
- *Actus reus:* Section 9(1)(b) – having entered as a trespasser the defendant commits or attempts to commit theft or GBH
- Entry – *Collins, Brown, Ryan*
- Building or part of a building – *Walkington*
- Trespasser – *Jones and Smith*
- *Mens rea* – dependent upon which ulterior offence under s.9(2) or offence under s.9(1)(b) the defendant is charged, having committed the *actus reus* - intent to commit one of these offences.

Define and explain robbery – section 8 Theft Act 1968:

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

Credit any other relevant point(s)

AO2 Indicative content

Answers **MAY**:

In the case of James and the bottle of beer:

- James must enter a building or part of a building - potentially entered the kitchen by reaching his arm through the serving hatch
- He must enter as a trespasser and, as a waiter, he is not allowed to enter the kitchen
- An intention to steal, provides *mens rea* for s9(1)(a)
- The offence is complete on entry – it does not need to be proved that he took the bottle of beer
- When he does steal the bottle of beer he is also guilty of s9(1)(b)

In the case of Nina knocking James unconscious:

- Nina has entered the restaurant as she is sitting at a table inside
- Nina is an intentional trespasser, as she knows that she is barred from the restaurant
- When Nina knocks James unconscious she has inflicted grievous bodily harm upon him ‘therein’
- She would be charged under s9(1)(b) as this includes inflicting grievous bodily harm after entering as a trespasser

In the case of Nina picking up the bottle of beer:

- Nina steals the bottle of beer, thus initially committing theft
- There is the use of force since Nina ‘smashes’ James with a plate knocking him unconscious
- The force is used ‘immediately before or at the time of’ the stealing – hitting James is immediately before she steals the bottle of beer
- However, it is unlikely that the force was used ‘in order to steal’ – it appears more an opportunist theft rather than a robbery
- The intent to steal is established as Nina leaves the restaurant with the bottle of beer.

Reach a reasoned conclusion in each instance.

Credit any other relevant point(s)

	AO1	Mark	AO2 1a/1b	Mark
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Level 4	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.	9–10	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.	12–15
Level 3	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.	6–8	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.	8–11
Level 2	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. Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	3–5	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.	4–7
Level 1	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	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 Layla, Kofi and Sarah are criminally liable for gross negligence manslaughter.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 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 gross negligence manslaughter:

- Was there a duty of care?
- Was the duty of care breached?
- Was there a risk of death and did death result? *Misra*
- Was the negligence so bad in all the circumstances as to amount to a criminal act or omission in the eyes of the jury? – *Adomako*.

Define and explain chain of causation:

- Causation in fact – defendant 'but for' their actions and more than a minimal contribution to death of victim – *White, Kimsey*
- Causation in law – defendant's act to be operative and substantial cause of harm – *Pagett, Church*
- Impact of poor medical treatment – *Smith, Cheshire, Jordan*.

Credit any other relevant point(s)

AO2 Indicative content

Answers **MAY**:

Layla and the death of the festivalgoers:

- Layla's duty is breached when she does not check Ian's/apprentices work
- There is a risk of death and death is caused
- Layla's failure to check Ian/apprentices' work will probably be grossly negligent as she has not fulfilled her duty and allowed Ian/his inexperienced workers to build an unsafe stage and go unchecked
- Layla will likely be liable for the gross negligence manslaughter of the festivalgoers
- Potential, but unlikely break in the chain by Sarah

Kofi and the death of the festivalgoers:

- Kofi's duty is breached when he does not check his apprentices work
- There is a risk of death in not checking unqualified apprentices and death is caused
- Kofi's failure to check his apprentices' work will probably be grossly negligent as he has allowed inexperienced workers to build the stage as this is a fundamental element of his job's health and safety routine
- Unlikely the chain of causation is broken by the apprentices in order for Kofi to rely upon a *novus actus interveniens*
- Potential, but unlikely break in the chain by Sarah
- Kofi will likely be liable for the gross negligence manslaughter of the festivalgoers

Sarah and the death of the injured festivalgoer:

- Sarah's duty is potentially breached when she misdiagnoses the festivalgoer's injury
- There is a risk of death and death is caused
- Sarah's failure to check the injury will probably be grossly negligent as she has not fulfilled her duty and allowed the festivalgoer to bleed to death in the back of the ambulance, as she goes on her lunch.
- Possible, but unlikely that the chain of causation is broken by Sarah in order for Ian or Layla to rely upon a *novus actus interveniens*
- Sarah will likely be liable for the gross negligence manslaughter of the festivalgoers.

Reach a reasoned conclusion in each instance.

Credit any other relevant point(s)

	AO1	Mark	AO2 1a/1b	Mark
Level 4	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.	9–10	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.	12–15
Level 3	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.	6–8	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.	8–11
Level 2	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. Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	3–5	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.	4–7
Level 1	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	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* 'The defence of duress by threat is essential but, in its current form, too restrictive'. 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. 10 marks. AO3 1a: Analyse and evaluate legal rules and principles. 15 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 the defence of duress:

- Defendant acts under pressure and, if successful, the effect is acquittal
- Found in common law
- Standard test governs the application of the defence, *Graham, Hasan*

Explain the elements of the defence:

- Must be a threat of death or serious bodily harm, *Martin*, to the defendant, or someone close to them, *Valderrama-Vega*
- D must behave like the 'sober person of reasonable firmness' - *Graham*
- Any self-induced characteristics must be excluded, and other characteristics may be excluded, *Bowen, Flatt*
- The threat should be 'immediate or almost immediate' *Hasan*
- The defendant must be judged by the threat as they perceived it to be, *Safi*
- There must be nexus between what D is instructed to do and what the defendant does, *Cole*
- No defence if the charge is murder or attempted murder, *Howe, Gotts*
- No defence if the defendant voluntarily associates with a criminal gang knowing the nature of what the gang does, *Sharp, Hasan*.
Defence is available if D did not know of gang's propensity for violence, *Shepherd*

Explain any proposals for reform for the defence – Law Commission Report on General Defences 1977

Credit any other relevant point(s)

AO3 Indicative content

Answers **MAY**:

Discuss any or all of the following areas in the context of the defence being essential but too restrictive:

- The need to take account that defendants act very differently under extreme pressure
- The large set of elements that a defendant must prove in order to successfully raise the defence
- The need for humanity in the law if it is to be seen as just and effective – a ‘concession to human frailty’
- Problems of proof – how can juries put themselves in the place of the defendant when trying to decide on the defence?
- The issue of timing between the threat and committing the crime - the requirement of seeking help or avoiding committing the crime is ambiguous
- Inconsistencies with other defences – especially loss of self-control which offers a partial defence to murder whereas duress is not available in relation to murder
- Inconsistency in that the defence is not available to murder and yet it is available if the charge is section 18 OAPA 1861
- Issues relating to the type of threat and to whom it is made – how easy it is to draw such lines if the pressure is overbearing to the individual concerned?
- Is the defence driven by policy particularly with regard to murder and association with known criminals and terrorists?

Discuss proposals for change/reform and any impact they may have if enacted

Reach any sensible conclusion in relation to the question

Credit any other relevant point(s).

	AO1	Mark	AO3 1a	Mark
Level 4	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.	9–10	Excellent analysis and evaluation of a wide range of legal rules and principles. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion. <i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i>	12–15
Level 3	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.	6–8	Good analysis and evaluation of a range of legal rules and principles. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion. <i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i>	8–11
Level 2	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. Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	3–5	Basic analysis and evaluation of legal rules and principles. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion. <i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i>	4–7

Level 1	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	Limited analysis of legal rules and principles. The response has limited focus on the question. Discussion of any key points is minimal. <i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i>	1–3
Level 0	No response or no response worthy of credit	0	No response or no response worthy of credit.	0

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