



GCE MARKING SCHEME

SUMMER 2016

LAW – PAPER LA3 (A2)

**UNIT 3: UNDERSTANDING SUBSTANTIVE LAW:
FREEDOM, THE STATE AND THE INDIVIDUAL**

**OPTION 2: CRIMINAL LAW AND JUSTICE
1253/02**

INTRODUCTION

This marking scheme was used by WJEC for the 2016 examination. It was finalised after detailed discussion at examiners' conferences by all the examiners involved in the assessment. The conference was held shortly after the paper was taken so that reference could be made to the full range of candidates' responses, with photocopied scripts forming the basis of discussion. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners.

It is hoped that this information will be of assistance to centres but it is recognised at the same time that, without the benefit of participation in the examiners' conference, teachers may have different views on certain matters of detail or interpretation.

WJEC regrets that it cannot enter into any discussion or correspondence about this marking scheme.

GENERAL MARKING GUIDANCE

General Instructions to LA3-02 Marking Scheme

Please refer to the marking matrix sent to you by the WJEC and apply the marks directed. The matrix reflects the assessment objectives for A2 Level Law and the marks are distributed precisely on the basis of these objectives. The various levels in the mark scheme according to the assessment objectives will be standardised at the Examiners' Meeting on the basis of sample scripts. At this time we can determine precisely what is reasonable in terms of the various components in the mark scheme. The marking instructions attached therefore, represent only a broad outline as to what is required.

You will note that marks are allocated for spelling, grammar and syntax. All questions are marked out of 25. Please insert mark scheme for DRS marking. All Assistant Examiners shall do this in order to ensure that standards are acceptable and consistent. If there is anything unusual about an answer or about the script please make a note on the front cover for the Chief Examiner. Please initial all scripts in the box provided. If you have any queries then please contact the **Principal Examiner Sara Davies**. If you have any administrative queries - contact the **Subject Officer Joanna Lewis on (029) 20265167 or e-mail joanna.lewis@wjec.co.uk**

Whilst comments on each question are not required you are nevertheless requested to isolate your final mark into the categories anticipated in the mark scheme. Please examine the rubric carefully as candidates are only required to answer **two** questions.

Principles of Marking ***(for LA3-02)***

1. The assessment is based upon four levels of attainment for Objectives AO1, AO2 and AO3, as indicated in the mark scheme.
2. The levels of assessment used in the mark schemes indicate the relative value of knowledge, understanding and skills which are relevant and may occur in the answers. In order to allow for different approaches by the candidates and to achieve flexibility, the sub-totals of each assessment objective must be indicated at the end of each answer, in accordance with A2 suggested weighting.
3. The range of marks allocated to each of the levels for each of the objectives is recorded in the mark schemes.

Levels-of-response marking is to be used in all questions and parts of questions. The whole response is to read and then, taking everything into account, allocate to the level of 'best fit' on the mark scheme. There is usually a band of marks allocated to each level: discrimination will be made with reference to the development of the answer.

4. The question specific mark scheme indicates the kind of material and analysis that a candidate might display in his/her answer. This is neither prescriptive nor exhaustive but indicates the general level likely to be achieved by a 17/18 year old under examination conditions having followed an appropriate course of study. Other approaches of equal merit will be awarded at the appropriate level. The question specific mark scheme is NOT a set of model answers and every point does not need to be covered in order to achieve full marks.
5. Examiners should not hesitate to award full marks to answers which are well argued and well presented or which show a freshness of treatment even if they do not fall fully within the suggested marking scheme, provided the answer demonstrates a high level of understanding and argument relevant to the question as set.
6. Wholly narrative or descriptive answers to questions requiring analysis and evaluation can only receive marks for Assessment Objective 1 (Knowledge and Understanding) and full marks can be awarded within this section if the answer so justifies.
7. For evaluation, at the top for AS level, it will be sufficient for candidates to demonstrate a sound analysis of reasoning and arguments in relation to legal issues. Candidates at the top level of A2 will be expected to have progressed beyond this, as demonstrated by the level 4 descriptor for Assessment Objective 2 in the A2 mark schemes.

MARKING INSTRUCTIONS

ASSESSMENT

1. Each question is to be marked according to the stated level descriptors in the mark schemes. In such marking, it is essential that the whole response to a part-question is read and then allocated to the level it best fits. Examiners may wish to underline significant features or make a brief comment to justify the level allocated.
2. Where a band of marks is allocated to a level, discrimination will be made with reference to the development of the response.
3. Aim to use the full mark range. Do not hesitate to award maximum marks to responses which meet the criteria of the relevant level descriptor in the Matrix. Equally, responses which are completely irrelevant should be awarded no marks.

ONLINE MARKING

For papers with conferences:

WJEC will be using a method of marking examination scripts known as e marker ® for this paper. Under this system, candidates' scripts are scanned and then transmitted to examiners electronically via the internet. Examiners mark on-screen; marked responses and marks are then submitted automatically.

Whilst the basic principles remain unchanged, this method entails some important changes to the way the system operates when examiners mark on paper:

- Examiners do not mark complete scripts. Instead scripts are divided into segments by question (item), and are transmitted to examiners in this form. Therefore each candidate's script will be marked by a number of different examiners.
- Examiners are required to complete an online standardising exercise. This involves the marking of a number of common candidate responses (roughly 30 of each item) which will be included in examiners' allocations at regular intervals during the process. Should marks given to these items fall outside the tolerance agreed by senior examiners on more than one occasion, examiners will be prevented from further marking of that item until the team leader has been able to resolve the issue.

In terms of technical requirements, examiners participating will need a personal computer running on Windows XP, Vista or Version 7 and a broadband internet connection. With an Apple Mac a Windows emulator is required.

For further details, please see the user guide available on e marker ® when you log on. Instructions on how to log on to the system and your username and password have been sent separately.

For papers using on-line standardising:

WJEC will be using a method of marking examination scripts known as e marker ® for this paper. Under this system, candidates' scripts are scanned and then transmitted to examiners electronically via the internet. Examiners mark on-screen; marked responses and marks are then submitted automatically.

Whilst the basic principles remain unchanged, this method entails some important changes to the way the system operates when examiners mark on paper:

- Examiners do not mark complete scripts. Instead scripts are divided into segments by question (item), and are transmitted to examiners in this form. Therefore each candidate's script will be marked by a number of different examiners.
- There is no examiner conference. Instead, examiners are required to complete an on-line standardising exercise, which is divided into two parts:
 1. Consideration of a number of responses selected and marked by principal examiners.
 2. The marking of a number of common candidate responses (roughly 30 of each item) which will be included in examiners' allocations at regular intervals during the process. Should marks be given to these items fall outside the tolerance agreed by senior examiners on more than one occasion, examiners will be prevented from further marking of that item until the team leader has been able to resolve the issue.

In terms of technical requirements, examiners participating will need a personal computer running on Windows XP, Vista or Version 7 and a broadband internet connection. With an Apple Mac a Windows emulator is required.

For further details, please see the user guide available on e marker ® when you log on. Instructions on how to log on to the system and your username and password have been sent separately.

EXAMINER'S REPORT

A written question-by-question report on the performance of candidates, as evidenced in the scripts you have marked, should be sent to the Principal Examiner within FIVE DAYS of the stated date for completion of marking. Your report is most helpful if it contains comments on frequent misunderstandings, weaknesses, common errors and questions which caused difficulties, as well as positive qualities, good practice and encouraging features. A comment that a particular question was answered well or badly is of no value unless accompanied by some specific explanation.

LAW – PAPER LA3 (A2)

UNIT 3: UNDERSTANDING SUBSTANTIVE LAW:
FREEDOM, THE STATE AND THE INDIVIDUAL

OPTION 2: CRIMINAL LAW AND JUSTICE

Answer *two* questions.

1. Simon became very depressed after his girlfriend Sinita ended their relationship and married Jeremy. He sent dozens of text messages to Sinita, begging her to leave Jeremy and come back to him. Eventually, Jeremy went to see Simon at his flat, and told him that this behaviour would have to stop. Simon was overcome by a jealous rage and struck Jeremy on the head with a vase. The blow fractured Jeremy's skull, which was abnormally thin. Simon immediately summoned an ambulance, and Jeremy was taken to hospital. By the time the ambulance arrived at the hospital, Jeremy's heart had stopped beating and he was no longer breathing. Jeremy was rushed to the intensive care unit and placed on a life-support system. A newly qualified doctor accidentally disconnected the life support machine and Jeremy died an hour later.
- (a) In light of reported case law and other sources of law, consider whether Simon may be criminally liable for Jeremy's death. [14]

Credit reference to:

- Elements of murder and manslaughter: actus reus and mens rea.
- Principles of causation: factual causation, legal causation, novus actus interveniens; cases such as White, Dalloway, Pagett.
- Chain of causation: whether broken by the actions of the victim (Blau, Wall, Roberts).
- Chain of causation: whether broken by medical negligence: Smith, Jordan, Cheshire.
- Voluntary manslaughter: possible defence of loss of control: Coroners and Justice Act 2009, ss.54-55.
- Involuntary manslaughter: unlawful act manslaughter (Church, Lamb, Franklin); gross negligence manslaughter (Adomoko).

Marks	AO3
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

	AO2
Marks	Skills
11-13	<p>Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation.</p> <p>This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.</p>
7-10	<p>Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question and support their conclusions by citation, analysis and analogy.</p>
3-6	<p>Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.</p>
0-2	<p>Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.</p>

(b) Explain how a jury is selected if Simon is tried in the Crown Court. [11]

Credit reference to:

- Mode of selection: random list of potential jurors generated by computer at the Central Summoning Bureau from the electoral register; summonses sent out to confirm that the individual is not in a disqualified category; jury for a particular case chosen by random ballot; first 12 names called out are sworn in.
- Qualification for jury service: 18-75 years old, resident in UK for at least five years since 13th birthday, not within a disqualified category.
- Criminal Justice Act 2003: only the over-65s and members of the armed forces are exempt. Those who are disqualified: anyone who has been sentenced at any time to five or more years' imprisonment; or in the past 10 years has served any part of a sentence of imprisonment, or had a suspended sentence or a community order.
- R v Abdroikov; R v Khan - in relation to involvement of barristers and judges.
- People who suffer from mental illness or handicap and are being treated regularly may not serve. The judge can discharge anyone who is not fit to serve through physical disability (blind or deaf) or does not have sufficient understanding of English.
- Summoning officer has discretion to excuse anyone or allow them to defer their service to another time for good reason.
- Jury vetting: routine police check to exclude those disqualified because of a criminal record; in exceptional cases the Attorney-General may authorise vetting of background and political views.
- A jury must be random; a judge may not attempt to create a racial balance on a jury: R v Ford.

Marks	AO3
2	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
1	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.

	AO1
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content <i>making an entirely convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content <i>making a convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
3-5	Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying that subject content <i>making a limited synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding structures and processes. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms.
0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content <i>making some basic synoptic connections</i> with the basic elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a basic understanding of the practical application of the law.

2. PC Holmes and PC Watson were sitting in their police car when Rhidian walked past wearing a hoodie with a backpack slung over his shoulder. PC Holmes said, "Let's have him," and called out to Rhidian to stop. PC Watson grabbed Rhidian's backpack, opened it and found it contained about fifty mobile phones. PC Holmes said to Rhidian, "Alright, get in the car, you're coming with us". Rhidian obeyed, and was driven to the police station. On the way, Rhidian explained that the members of the choir group he was a member of were donating their old mobile phones to raise money for the Ebola relief effort in Africa, and had put Rhidian in charge of the collection. When they arrived at the police station, Rhidian asked to be allowed to contact his wife and consult a solicitor. The custody officer said that he had to wait to contact his wife and could not speak to a solicitor until the police had checked out his story. Rhidian was then detained for 52 hours, during which time he was interviewed for lengthy periods without a break and with no food or water. At the end of that time, the police told Rhidian that he would be bailed pending further enquiries.

(a) In light of reported case law and other sources of law, advise Rhidian as to the legality of the actions of the police. [14]

Credit reference to:

- Police and Criminal Evidence Act 1984, as amended.
- Police powers to stop and search: PACE ss. 1-3 and Code A.
- Power of arrest: PACE s.24 as amended by s.110 Serious Organised Crime and Police Act 2005; necessity tests and Code G.
- Role of custody officer; rights of suspect when brought to the police station; Code C.
- Rights of suspect during detention: PACE s.56 - right to have someone informed of detention; s.58 - right to legal advice; when these rights can be delayed.
- Time limits on detention: PACE s.41 -44
- Detention reviews: PACE s.40.

Marks	AO3
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question and support their conclusions by citation, analysis and analogy.
3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
0-2	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

(b) Explain the powers of the police to grant bail to Rhidian.

[11]

Credit reference to:

- Police and Criminal Evidence Act 1984, ss.37 and 38: powers of custody officer to grant bail.
- Bail should be granted when a suspect has been charged with an offence (s.38) unless: there is doubt about the name or address of the suspect; or detention is necessary to protect the suspect from himself or others; to protect others from the suspect; there is a danger that the suspect may not answer to bail, or may interfere with witnesses or the administration of justice.
- Coroners and Justice Act 2009 says the police should not grant bail if the charge is murder.
- Bail can be granted after a suspect has been arrested but not charged (s.37) if the custody officer believes that there is sufficient evidence to charge the suspect or sufficient evidence to justify holding the suspect while the police continue their enquiries.
- Bail conditions: police may grant bail subject to conditions: Criminal Justice and Public Order Act 1994 - examples of conditions.
- Power of police to grant 'street bail' under s.4 of the Criminal Justice Act 2003
- The Police (Detention and Baol) Act 2011 provides retrospectively that the police can keep someone on bail without charge for as long as they consider necessary - reverses Greater Manchester Police v Hookway 2011.

Marks	AO3
2	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
1	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.

	AO1
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content <i>making an entirely convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content <i>making a convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
3-5	Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying that subject content <i>making a limited synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding structures and processes. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms.
0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content <i>making some basic synoptic connections</i> with the basic elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a basic understanding of the practical application of the law.

3. Chris and Joe were best friends until Chris started going out with Joe's ex-girlfriend, Katy. Chris and Katy were sitting together in the cinema when Chris received a text message from Joe which said: "I am behind you. Be very afraid". Katy read the text, and turned pale with fright. Seconds later, Chris was hit on the back of the head by a bucket of popcorn thrown by Joe. Chris decided that it was time he and Joe ended their quarrel, so he located Joe among the crowd of cinema goers and suggested that they settle their differences as they always did, with a friendly fist fight. Joe consented to the plan, and the two young men started to fight one another in the street outside the cinema. Not wanting to hurt Joe, Chris delivered a loose punch which barely grazed Joe's face. Joe retaliated with a blow that knocked out one of Chris's teeth. A passer-by, Ryan, saw the blood coming from Chris's mouth, and ran up to separate them. Thinking that he was being attacked, Joe kicked Ryan in the stomach causing him serious internal injuries.

(a) In light of reported case law and other sources of law, consider the criminal liability of Chris and Joe. [14]

Credit reference to:

- Assault and battery at common law: summary offences – Criminal Justice Act 1988, s.39.
- Offences Against the Person Act 1861: sections 47, 20 and 18.
- Elements of assault and battery: actus reus and mens rea.
- Elements of aggravated assaults under s.47, s. 20 and s. 18 of the OAP Act 1861.
- Section 47: actual bodily harm - actus reus is an assault which causes actual bodily harm, any injury calculated to interfere with the health or comfort of the victim (Miller) – under the CPS Charging Standards it includes temporary loss of consciousness, minor cuts and grazes and scalds, broken bones without complications. Mens rea is intention to commit assault/battery or recklessness. Foresight of the degree of harm is not necessary: Roberts; Savage, Parmenter.
- Section 20: actus reus is unlawful wounding or unlawful infliction of grievous bodily harm. GBH means serious harm: Smith. A wound must break the inner and outer skin: C v Eisenhower. Mens rea-intention or recklessness – D must foresee a degree of harm, but not necessarily the degree of harm which occurred: Mowatt, Savage and Parmenter.
- Section 18: actus reus is wounding or causing grievous bodily harm. Mens rea requires intention to wound or cause GBH, or to resist or prevent a lawful arrest.
- Defences: consent self-defence - Joe.

Marks	AO3
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question and support their conclusions by citation, analysis and analogy.
3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
0-2	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

- (b) Explain the tests that would be used by the Crown Prosecution Service when deciding whether Chris and Joe should be prosecuted. [11]

Credit reference to:

- The decision whether to prosecute is made using the “Full Code Test” contained in the Code for Crown Prosecutors, issued by the Director of Public Prosecutions under s.10, of the Prosecution of Offences Act 1985. Revised version reissued January 2013.
- This consists of two tests, the evidential test and the public interest test, which must be applied in that order. If the evidential test is not passed, then the case should not be proceeded with at that time. If the evidential test is passed, the Crown Prosecutor should go on to consider the public interest test. Only if both tests are passed should proceedings be brought.
- Evidential test – is there a realistic prospect of conviction, i.e. would a court be more likely than not to convict. the CP must consider two issues: can the evidence be used in court, and is it reliable.
- Whether evidence can be used in court – is it likely to be excluded because of the way it was obtained; is it hearsay; does it relate to the bad character of the accused?
- Whether evidence is reliable – is it consistent with an innocent explanation; are there doubts about the reliability of a confession; is the identity of the suspect likely to be questioned; are there doubts about the reliability of any witnesses; does a witness have any ulterior motive; does a witness have convictions which cast doubt on his/her reliability; is there a need to gather more evidence?
- If it would be helpful in assessing a witness’s reliability, an appropriately trained Crown Prosecutor may conduct a pre-trial interview with the witness.
- Public interest test – it will usually be in the public interest to prosecute unless the prosecutor is satisfied that the public interest is better served by not bringing a prosecution or by offering an out-of-court disposal.
- When deciding the public interest, prosecutors should consider each of the questions, i.e. How serious is the offence committed? What is the level of culpability of the suspect? What are the circumstances of and the harm caused to the victim? Was the suspect under the age of 18 at the time of the offence? What is the impact on the community? Is prosecution a proportionate response? Do sources of information require protecting, so as to identify and determine the relevant public interest factors tending for and against prosecution?. These factors, together with any public interest factors set out in relevant guidance or policy issued by the DPP, should enable prosecutors to form an overall assessment of the public interest.
- Examples of factors tending in favour of prosecution: e.g. offence likely to result in a significant sentence; committed with a weapon; committed by a group; committed against someone serving the public; committed against a vulnerable person; the accused’s previous record, etc.
- Factors tending against prosecution; sentence likely to be small; prosecution would have a bad effect on the victim; offence was the result of a genuine mistake; accused has made reparation; accused suffers from significant physical or mental ill-health, etc.
- The prosecutor may take account of the views of the victim and his/her family. However, the prosecutor does not act for the victim or his/her family, and must form an overall view of the case.
- Threshold Test

Marks	AO3
2	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
1	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.

AO1	
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content <i>making an entirely convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content <i>making a convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
3-5	Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying that subject content <i>making a limited synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding structures and processes. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms.
0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content <i>making some basic synoptic connections</i> with the basic elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a basic understanding of the practical application of the law.

4. Tyrone is an epileptic who often ignores his doctor's advice about taking his medication. One day he rode his pedal bike into town without bothering to take his medication first. This caused him to lose concentration and ride too close to a pest control van carrying a wasp's nest recently extracted from a local home. The van swerved, disturbing the wasps, which escaped, causing Tyrone to lose control of his bike and crash into a shop window. Tyrone was not injured, but Janet, a customer in the shop, was cut by flying glass.

(a) In the light of reported case law and other sources of law, consider whether any possible defences might be available to Tyrone if he were charged with a criminal offence. [14]

Credit reference to:

- Automatism: where an action is done without any control by the mind, e.g., concussion, sleepwalking: *Bratty v A-G for Northern Ireland*, *Hill v Baxter*.
- Automatism may be insane or non-insane depending on whether the cause is internal (insane) or external (non-insane). Where the cause is external, such as a drug, the outcome depends on whether automatism was involuntary or self-induced. Case: *Bailey* – self-induced automatism not a defence where (a) D was reckless in becoming an automaton, or (b) if automatism was caused by illegal drink or drugs. However, it was said that (c) automatism is available if D did not know that his actions were likely to result in automatism, as he would not have been reckless in becoming an automaton. Case: *Hardie* – D reckless in becoming an automaton.
- Automatism is a complete defence to specific intent crimes and also to basic intent crimes when not self-induced

Marks	AO3
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question and support their conclusions by citation, analysis and analogy.
3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
0-2	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

- (b) Explain the process of appeal if Tyrone were to be found guilty in the magistrates' court.

[11]

Credit reference to:

- Magistrates Court Act 1980, as amended by the Criminal Appeals Act 1995, s.142 - magistrates can rectify an error where it would be in the interests of justice to do so. The case is retried before a different bench, and the sentence may be varied.
- Appeal as of right to the Crown Court against conviction/sentence.
- Only appeals against sentence can be made if the defendant pleaded guilty.
- Appeal must be made within 28 days of conviction.
- Appeal is heard by a circuit judge sitting with 2-4 magistrates who were not involved in the original trial. Each vote carries the same weight but if the votes are evenly divided, the circuit judge has the casting vote.
- Appeal takes the form of a re-hearing.
- The court can either confirm the verdict or sentence of the original magistrates, or substitute its own decision. It can impose any sentence that the original magistrates could have imposed, and may increase as well as reduce the original sentence.
- Appeal by way of case stated to the Divisional Court. The magistrates, or the Crown Court when hearing an appeal from the magistrates' court, may be asked by the prosecution or defendant to state the case for consideration by the Divisional Court.
- The Divisional Court can also hear applications for judicial review to decide whether the case has been heard according to the rules of natural justice.
- Appeals by way of case stated are heard by up to three judges of the Queen's Bench Division of the High Court.
- The court can confirm, reverse or vary the magistrates' decision; give their opinion on the relevant point of law, or make such other order as it sees fit, including ordering a re-hearing.
- If an appeal has already been made to the Crown Court, either side can appeal against the Crown Court's decision by way of case stated, but a party who has already appealed to the High Court by way of case stated may not then appeal to the Crown Court.
- Further appeal on a point of law may be made directly to the Supreme Court, but only if the Divisional Court certifies that the case involves a point of law of general public importance, and either the Divisional Court or the Supreme Court grants permission for the appeal to be heard

Marks	AO3
2	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
1	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.

	AO1
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content <i>making an entirely convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content <i>making a convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
3-5	Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying that subject content <i>making a limited synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding structures and processes. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms.
0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content <i>making some basic synoptic connections</i> with the basic elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a basic understanding of the practical application of the law.