

**A-level**  
**LAW**  
**7162/1**

Paper 1

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**Mark scheme**

June 2020

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Version: 1.0 Final Mark Scheme

Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

Further copies of this mark scheme are available from [aqa.org.uk](http://aqa.org.uk)

## Level of response marking instructions

Level of response mark schemes are broken down into levels, each of which has a descriptor. The descriptor for the level shows the average performance for the level. There are marks in each level.

Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

### Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

### Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

**01** Select the **true** statement about liability for an omission.

**[1 mark]**

**Marks for this question: AO1 = 1**

**A** An Act of Parliament can create liability for an omission.

**02** Select the **true** statement about the defence of diminished responsibility.

**[1 mark]**

**Marks for this question: AO1 = 1**

**A** The abnormality of mental functioning must provide an explanation for the defendant's conduct.

**03** Within statutory interpretation, which **one** of the following is **not** an intrinsic (internal) aid to interpretation?

**[1 mark]**

**Marks for this question: AO1 = 1**

**A** A Law Commission Report

**04** The CILEx Regulation Board has the power to discipline which **one** of the following?

**[1 mark]**

**Marks for this question: AO1 = 1**

**C** A legal executive

**05** Select the **true** statement about the role of the jury within the criminal justice system.  
The jury will

**[1 mark]**

**Marks for this question: AO1 = 1**

**C** reach a verdict based on the facts presented.

<b>06</b>	<p>The 1966 Practice Statement is a method used by the Supreme Court to avoid a binding precedent.</p> <p>Using any example, explain the 1966 Practice Statement.</p> <p style="text-align: right;"><b>[5 marks]</b></p>
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**Marks for this question: AO1 = 5**

	<b>Levels of response mark scheme 5 marks – AO1 only</b>
<b>Mark range</b>	<b>Description</b>
<b>4–5</b>  <b>Band 3</b>	<p>Knowledge is good and demonstrates a good understanding of the English legal system.</p> <p>Where appropriate a good example of a case to illustrate suggested reasons.</p>
<b>2–3</b>  <b>Band 2</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system.</p> <p>Where appropriate a satisfactory example of a case to illustrate reasons.</p>
<b>1</b>  <b>Band 1</b>	<p>Knowledge is limited and demonstrates a limited understanding of the English legal system.</p> <p>Where appropriate a limited example of a case to illustrate reasons.</p>
<b>0</b>	Nothing worthy of credit.

### Indicative content

- Judicial precedent is based on ‘stare decisis’. Standing by previous decisions.
- 1966 Practice Statement allows the Supreme Court to depart from a previous decision when ‘it appears right to do so’.
- 1966 Practice Statement states that the Supreme Court should bear in mind the danger of disturbing retrospectively the basis on which contracts, settlement of property, and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law.

Appropriate examples which illustrate its use may include – **British Railways Board v Herrington (1972)** overruled **Addie v Dumbreck (1929)**, **R v Shivpuri (1986)** overruled **Anderton v Ryan (1985)**, **R v G (2003)** overruled **MPC v Caldwell (1982)**, **Austin v London Borough of Southwark (2010)** overruled **Brent London Borough Council v Knightley (1997)**.  
Credit any other relevant point(s).

<b>07</b>	<p>Causation requires proof of causation in fact and causation in law. Alice caused the permanent damage to Belle's wrist in fact.</p> <p>Suggest why Alice is likely to have <b>caused</b> the permanent damage to Belle's wrist <b>in law</b>.</p> <p style="text-align: right;"><b>[5 marks]</b></p>
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**Marks for this question: AO1 = 2 and AO2 = 3**

	<b>Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)</b>
<b>Mark range</b>	<b>Description</b>
<b>4–5</b>  <b>Band 3</b>	Good outline explanation of legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
<b>2–3</b>  <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory application of legal rules and principles to the scenario. Satisfactory explanation of a relevant case to support the application.
<b>1</b>  <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of legal rules and principles.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Outline explanation that inadequate medical treatment can be a new intervening act that breaks the chain of causation.
- Outline explanation that a break in the chain of causation will only occur where the medical treatment is so independent and so potent that it makes the defendant's act insignificant.

#### **AO2**

- Identification of key facts: Alice pushed Belle causing a sprain to her wrist, this in turn required Belle to seek medical treatment that resulted in permanent damage.
- Application of the rule: The push is significant/substantial not de minimis. Consideration of the act of a third party (medical treatment) and that the chain would only be broken if the intervening act is sufficiently independent of the defendant's conduct.
- Recognition that medical negligence rarely breaks the chain of causation.
- To conclude that Alice is likely to be found to have caused the permanent damage.
- Case(s) enhance explanations or are the vehicle via which explanation emerges. Examples include **R v Cheshire (1991)**, **R v Jordan (1956)**, **R v Smith (1959)**.

Credit any other relevant point(s).

<b>08</b>	In relation to the incident with Debbie, advise Caroline of her criminal liability for the offence of assault (battery) occasioning actual bodily harm under s47 Offences against the Person Act 1861.
	<b>[10 marks]</b>

**Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3**

	<b>Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)</b>
<b>Mark range</b>	<b>Description</b>
<b>7–10</b>  <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario. Good explanation of relevant legal authority to support the application. A good legal argument is presented using appropriate terminology to support advice.
<b>3–6</b>  <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. Satisfactory explanation of relevant legal authority to support the application. A satisfactory legal argument is presented using some appropriate terminology to support advice.
<b>1–2</b>  <b>Band 1</b>	A limited demonstration of knowledge. Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Outline explanation of the elements of the offence of Assault Occasioning Actual Bodily Harm (actus reus and mens rea).
- Outline explanation of the actus reus elements of s47 apprehension of immediate unlawful personal violence or infliction of unlawful personal violence which causes more than trivial hurt or injury.
- Outline explanation of the mens rea elements of s47 as intention or (subjective) recklessness as to causing apprehension of personal violence or as to inflicting personal violence.
- Outline explanation of the requirements of causation in fact and causation in law including the thin skull rule
- Reference to supporting case authority, for example, **R v Chan-Fook**, **R v Savage**, **R v Latimer** **R v Blaue**.

**AO2**

- Application of the actus reus for battery to conclude that Caroline applied unlawful force when the soap made contact with Debbie.
- Application of the rules of causation (occasioning).
- Application of the thin skull rule in relation to the allergic reaction to conclude that causation is satisfied.
- Application to conclude that the allergic reaction and subsequent temporary blurred vision would satisfy the ABH (minor injury) requirement.
- Application of the mens rea to conclude that there may be evidence of direct intention or at the least recklessness for the battery.
- Application to suggest that Caroline may have committed an assault in causing Debbie to apprehend immediate personal violence by throwing the soap.
- Reference to supporting case authority – **DPP v K (1990)**, **R v Roberts (1971)**, **R v Chan-Fook (1994)**, **R v Blaue (1975)**.

**AO3**

- Analysis and evaluation of the actus reus elements, in particular, the meaning of actual bodily harm.
- Analysis and evaluation of the mens rea requirement (Intention/recklessness).
- Analysis and evaluation of the causation/thin skull issues.

Credit any other relevant point(s).

Note: If s47 is established via an assault only: Max. 7 marks (Band 3)



<b>09</b>	<p>Self-defence may be used as a defence in criminal law.</p> <p>Examine the meaning of 'justice' and discuss the extent to which the availability of the defence of self-defence may achieve justice.</p> <p style="text-align: right;"><b>[15 marks]</b></p>
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**Marks for this question: AO1 = 5 and AO3 = 10**

	<b>Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>13–15</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>Excellent analysis and evaluation of legal rules and principles; concepts and issues. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>10–12</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>Good analysis and evaluation of legal rules and principles; concepts and issues. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>7–9</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>Satisfactory analysis and evaluation of legal rules and principles; concepts and issues. Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
<b>4–6</b>  <b>Band 2</b>	<p>Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>Limited analysis and evaluation of legal rules and principles; concepts and issues. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<b>1–3</b>  <b>Band 1</b>	<p>Knowledge is minimal and demonstrates a minimal understanding of the Nature of law and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>Minimal analysis and evaluation of legal concepts and issues.</p> <p>No chain of reasoning is attempted.</p>

0	Nothing worthy of credit.
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### Indicative content

#### AO1

- Identification and brief description of the different possible meanings 'of justice,' for example, justice in terms of basic fairness or equality of treatment.
- Identification and brief explanation of the rules of natural justice
- Identification of different theories of justice, eg distributive justice, utilitarianism and social justice
- Identification and brief explanation of the philosophies behind the theories and the thinkers who have explained them e.g. Aristotle, Marx, Bentham, Rawls etc.
- Identification and brief explanation of the elements required to successfully prove self-defence.

#### AO3

- Analysis of the importance of philosophical theories of justice and how they have been embedded within the legal system.
- Analysis of procedural justice and how legal institutions, such as the courts and the judiciary work to achieve justice.
- Analysis of how the law has been developed in order to achieve justice, for example, miscarriages of justice and the development of the Criminal Cases Review Commission.
- Analysis of the scope of self-defence.
- Analysis and evaluation of the necessity for force, pre-emptive strikes.
- Analysis and evaluation of the extent to which justice is promoted: use of the defence as a complete defence, mistaken use of force, proportionality, application to homeowners against intruders, use of pre-emptive force in self-defence.
- Use of supporting case authority to evaluate the analysis above. For example, **R v Gladstone Williams**, **Beckford v The Queen**, **R v Bird**, **R v Clegg**.

Credit any other relevant point(s).

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total marks
5	10	15

<b>10</b>	Consider the criminal liability of Frank in connection with the £200 and with the death of George.	<b>[30 marks]</b>
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**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b> <b>Band 5</b>	Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority. There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario. An excellent legal argument is presented using appropriate terminology. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
<b>19–24</b> <b>Band 4</b>	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority. There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario. A good legal argument is presented using appropriate terminology. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
<b>13–18</b> <b>Band 3</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority. There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.
<b>7–12</b> <b>Band 2</b>	Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority. There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario. A limited legal argument is presented using little appropriate terminology. Some reasoning is attempted which leads to a limited conclusion.
<b>1–6</b> <b>Band 1</b>	Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority. There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario. A fragmented legal argument is attempted. No chain of reasoning is attempted.
<b>0</b>	Nothing worthy of credit.

## Indicative content

### AO1

- Identification and outline explanation of the offences of theft and robbery.
- Identification and outline explanation of unlawful act of manslaughter. (Credit actus reus elements of murder and credit elements of gross negligence manslaughter as an alternative)
- Identification and outline explanation of the defence of voluntary intoxication.
- Reference to supporting statutory authority (Theft Act 1968 s1 and s8).
- Reference to supporting case authority, eg **R v Ghosh**, **Ivey v Genting Casino**, **R v Dawson and James**, **R v Lockley**, **R v Beard**.

### AO2

- Application of the actus reus of theft to conclude that there was an appropriation of property (£200) belonging to another (the shop).
- Application of the dishonesty mens rea requirement to conclude that Frank may not be regarded as dishonest due to the s2(1)(a) provision ‘... in the belief that he has in law the right to deprive the other of it’
- Application of the mens rea requirement; intention to permanently deprive to discuss the requirement in relation to s6 as Frank returned the money.
- Application of the actus reus and mens rea of robbery to conclude that the force used (‘push’) in order to escape is sufficiently proximate to the seizing of the money and so satisfies both the actus reus requirement; for the force to be used “immediately before or at the time of [the stealing]” and mens rea requirement of robbery. (**R v Lockley**).
- Application of the elements of unlawful act manslaughter to conclude that there was an unlawful act by throwing the beer which amounts to an assault.
- Application to the facts of the scenario to conclude that Frank probably caused the death of George by his crime of assault, and that the action of throwing beer is likely to be ‘dangerous’ as it is foreseeable that there is a risk of injury when a person responds quickly to ‘avoid being soaked’ by beer and so creates a risk of harm. (falling, bumping into people/objects) Credit alternative application of gross negligence manslaughter.
- Application of the rules of causation to suggest that the victim’s response to the threat was foreseeable and reasonable (**R v Roberts**) and so there is a direct link between the assault and the death.
- Application of the relevant mens rea for the unlawful act, not death. (**Newbury and Jones**).
- Application of the defence of voluntary intoxication to conclude that there is no defence based on **Majewski**.

### AO3

- Analysis and evaluation of the actus reus and mens rea elements for theft, particular discussion relating to dishonesty.
- Analysis and evaluation of the actus reus and mens rea elements for robbery, particular discussion of the use of force in order to steal.
- Analysis and evaluation of the elements of unlawful act manslaughter, particular discussion of whether the act was dangerous based on facts.
- Analysis and evaluation of the availability of the defence of voluntary intoxication
- Use of supporting case authority to evaluate the analysis above. For example, **Velumyl**, **Dawson and James**, **R v Hale**, **R v Church**, **DPP v Majewski**.
- Credit any other relevant point(s).

### ICG’s

- 1) Theft
- 2) Robbery and intoxication
- 3) Unlawful act manslaughter

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total marks
30	0	30

**11** Consider Isobel's criminal liability for the murder of Harry.

Assuming that Isobel is found guilty, assess the sentencing powers available to the court.

**[30 marks]**

**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the English legal system and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>There is excellent analysis and evaluation of legal concepts and issues.</p> <p>Excellent drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the English legal system and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>There is good analysis and evaluation of legal concepts and issues.</p> <p>Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology.</p>

	<p>There is satisfactory analysis and evaluation of legal concepts and issues. Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
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<p><b>7–12</b></p> <p><b>Band 2</b></p>	<p>Knowledge is limited and demonstrates a limited understanding of the English legal system and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>There is limited analysis and evaluation of legal concepts and issues.</p> <p>Limited drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<p><b>1–6</b></p> <p><b>Band 1</b></p>	<p>Knowledge is minimal and demonstrates a minimal understanding of the English legal system and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>There is minimal analysis and evaluation of legal concepts and issues.</p> <p>Minimal drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. No chain of reasoning is attempted.</p>
<p><b>0</b></p>	<p>Nothing worthy of credit.</p>

### Indicative content

#### AO1

- Identification and outline explanation of the offence of murder.
- Identification and outline explanation of the specific defence to murder of loss of control.
- Reference to appropriate supporting case and statutory authority (for example, s54 Coroners and Justice Act 2009).
- Identification of the sentencing powers of the Crown court.

#### AO2

- Application of the facts to suggest that the multiple stab wounds are strong evidence of an intention to cause at least serious injury; there is a prima facie case of murder.
- Application to suggest that Isobel may raise the defence of loss of control via the anger trigger due to the violence and taunt 'you're a useless wife'. Reference to the need for circumstances of extremely grave character and justifiable sense of being seriously wronged.
- Application of excluded matters including reference to sexual infidelity and how this could be used in addition, but not as a trigger on its own (Clinton) and possible evidence of revenge due to the time delay.
- Application to suggest that Isobel may be able to raise the fear trigger in response to the fear relating to the threat to 'beat her up' in accordance to s55 'D's fear of serious violence from V against D or another identified person'.
- Application of the requirement that 'a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D' (s54).

**AO3**

- Analysis and evaluation of mens rea in murder: direct and oblique intent (foresight of consequences); death and serious injury to conclude that Isobel may have express intention to kill or at the least she has implied intention to cause GBH based on the multiple stab wounds.
- Analysis and evaluation of the availability of the defence of loss of control to conclude that if successful the conviction will be voluntary manslaughter and if not it will be murder.
- Analysis and evaluation of the mandatory life sentence/levels of minimum term. Analysis of alternative sentences if guilty of voluntary manslaughter.
- Use of supporting case authority to evaluate the analysis above. For example **R v Woollin**, **R v Jewell**, **R v Clinton**.

ICG's

- 1) Murder
- 2) Loss of control
- 3) Non substantive element

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total marks
23	7	30



**Assessment Objectives Grid**

	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>	<b>Total</b>
1	1			<b>1</b>
2	1			<b>1</b>
3	1			<b>1</b>
4	1			<b>1</b>
5	1			<b>1</b>
6	5			<b>5</b>
7	2	3		<b>5</b>
8	3	4	3	<b>10</b>
9	5		10	<b>15</b>
10	10	10	10	<b>30</b>
11	10	10	10	<b>30</b>
<b>Paper Total</b>	<b>40</b>	<b>27</b>	<b>33</b>	<b>100</b>

**Distribution of marks for substantive and non-substantive law**

<b>Question</b>	<b>Substantive</b>	<b>Non-substantive</b>	<b>Total Marks</b>
1	1		1
2	1		1
3		1	1
4		1	1
5		1	1
6		5	5
7	5		5
8	10		10
9	5	10	15
10	30		30
11	23	7	30
<b>Total</b>	<b>75</b>	<b>25</b>	<b>100</b>
<b>Total %</b>	<b>75</b>	<b>25</b>	<b>100</b>

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LAW  
7162/1**

Paper 1

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**Mark scheme**

June 2021

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Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

### Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

### Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

**01** Which of the following is **not** a defence to murder?

**[1 mark]**

**Marks for this question: AO1 = 1**

**B** Duress

**02** Which is the **false** statement about the requirements needed to prove the offence of robbery?

**[1 mark]**

**Marks for this question: AO1 = 1**

**B** The defendant can be reckless as to the use of force.

**03** Select the statement that most accurately describes the aim of the purposive approach to statutory interpretation.

**[1 mark]**

**Marks for this question: AO1 = 1**

**B** Finding what Parliament intended to achieve

**04** A defendant who pleads guilty to an offence in the Magistrates' Court can appeal to the Crown Court against:

**[1 mark]**

**Marks for this question: AO1 = 1**

**D** sentence only.

**05** Select the **false** statement about lay magistrates.

**[1 mark]**

**Marks for this question: AO1 = 1**

**C** Lay magistrates do not hear either-way offences.

**06** Using any **two** examples, explain **extrinsic** aids to interpretation.

**[5 marks]**

**Marks for this question: AO1 = 5**

	<b>Levels of response mark scheme 5 marks – AO1 only</b>
<b>Mark range</b>	<b>Description</b>
<b>4–5</b> <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of the English legal system. Where appropriate a good example of a case to illustrate suggested reasons.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system. Where appropriate a satisfactory example of a case to illustrate reasons.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of the English legal system. Where appropriate a limited example of a case to illustrate reasons.
<b>0</b>	Nothing worthy of credit.

#### **Indicative content**

- Extrinsic aids are found outside the Act.
- They help explain the meaning of words within the Act.
- They may help the judge find Parliament's reasons for passing an Act.
- Use of appropriate examples to explain the answer may include: previous Acts of Parliament, historical setting, dictionaries of the time, Hansard, Law Commission Reports etc.
- Appropriate supporting case law may include – **Cheeseman v DPP**, **Davis v Johnson**, **Pepper v Hart**, **Black-Clawson**.

Credit any other relevant point(s).

Answers which do not include any examples cannot achieve marks higher than band 2.

- 07** Using the principle of coincidence (the contemporaneity rule), suggest why, in law, Asha is likely to have satisfied the requirement for both the actus reus and mens rea to be present at the same time.

**[5 marks]**

**Marks for this question: AO1 = 2 and AO2 = 3**

<b>Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)</b>	
<b>Mark range</b>	<b>Description</b>
<b>4–5</b> <b>Band 3</b>	Good outline explanation of legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory application of legal rules and principles to the scenario. Satisfactory explanation of a relevant case to support the application.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of legal rules and principles.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- An actus reus can be composed of one act which continues. Possible reference to a series of acts which comprise one continuous transaction.
- There will be sufficient coincidence if mens rea is present at any time during the above.

#### **AO2**

- Application of the rule to suggest that the actus reus was satisfied when the box was placed on Bilal's arm.
- Application to suggest that the actus reus continued until it coincided with the mens rea which was satisfied when Asha realised what had happened and intentionally failed to remove the box.
- Application to conclude that the actus reus and mens rea were both present.  
Cases to enhance the explanation or application may include **Thabo Meli v R, Church, Fagan**.

Credit any other relevant point(s).



**08** Advise Cassie, with regard to the mens rea of s18 and s20 (Offences Against the Person Act 1861), whether she could avoid criminal liability for the injury to Daisy by pleading intoxication.

**[10 marks]**

**Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3**

	<b>Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)</b>
<b>Mark range</b>	<b>Description</b>
<b>7–10</b>  <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario. Good explanation of relevant legal authority to support the application. A good legal argument is presented using appropriate terminology to support advice.
<b>3–6</b>  <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. Satisfactory explanation of relevant legal authority to support the application. A satisfactory legal argument is presented using some appropriate terminology to support advice.
<b>1–2</b>  <b>Band 1</b>	A limited demonstration of knowledge. Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Identification and outline explanation of the plea of voluntary intoxication, including the distinction between specific and basic intent offences
- Identification and outline explanation of the mens rea of s20 and s18 (Offences Against the Person Act 1861)
- Identification and outline explanation of the effect of the defence of intoxication in that it can reduce a conviction to the corresponding basic intent offence.
- Appropriate supporting case law may include – **Mowatt, Lipman, Sheehan and Moore.**

**AO2**

- Application of the effect of voluntary intoxication on criminal liability for the specific intent offence (s18) to suggest that if Cassie was capable of forming the necessary mens rea, regardless of the intoxication, then the defence will fail. However, if the extent of the intoxication, through alcohol and drugs, prevented Cassie from forming the necessary mens rea then the defence will succeed and s20 will be substituted.
- Application to support the s18 charge in that Cassie had an intention to cause serious injury (s18) as she intended to cause serious bodily harm as she armed herself with a weapon (tennis racket) and struck Daisy a 'powerful blow'
- Application of the effect of voluntary intoxication on criminal liability for the basic intent offence (s20) to suggest that the intoxication itself will constitute a recklessness course of conduct and so the defence will fail.
- Application to support the s20 charge in that Cassie did not have specific intention but rather the facts suggest an intention/subjective recklessness as to cause some harm through the 'powerful blow'

**AO3**

- Analysis and evaluation of the availability of voluntary intoxication in relation to basic and specific intent offences.
- Analysis and evaluation of mens rea requirements to distinguish between s18 and s20 OAPA 1861.
- Analysis and evaluation of the effect of voluntary intoxication on the conviction.
- Authority to support arguments: Offences Against the Person Act 1861 s20 and s18, **DPP v Majewski** etc.

Credit any other relevant point(s).

<b>09</b>	Examine the principle of fair labelling <b>and</b> the principle of correspondence. Discuss the extent to which any <b>one</b> of the non-fatal offences against the person satisfies <b>one</b> of these principles.
	<b>[15 marks]</b>

**Marks for this question: AO1 = 5 and AO3 = 10**

	<b>Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>13–15</b> <b>Band 5</b>	Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority. Excellent analysis and evaluation of legal rules and principles; concepts and issues. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
<b>10–12</b> <b>Band 4</b>	Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority. Good analysis and evaluation of legal rules and principles; concepts and issues. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
<b>7–9</b> <b>Band 3</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority. Satisfactory analysis and evaluation of legal rules and principles; concepts and issues. Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A chain of reasoning starts to develop which leads to a partially justified conclusion.
<b>4–6</b> <b>Band 2</b>	Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority. Limited analysis and evaluation of legal rules and principles; concepts and issues. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.
<b>1–3</b> <b>Band 1</b>	Knowledge is minimal and demonstrates a minimal understanding of the Nature of law and legal rules and principles. Minimal selection and use of relevant legal authority. Minimal analysis and evaluation of legal concepts and issues. No chain of reasoning is attempted.
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
5	10	15

**Indicative content****AO1**

- Identification and explanation of the meaning of fair labelling; conviction should carry the correct 'label'.
- Identification and explanation of the meaning of correspondence; where the actus reus and mens rea should correspond, the offender's liability should not exceed the harm encompassed by his mens rea.
- Possible explanation of the significance and link between fair labelling and correspondence.
- Outline explanation of the extent to which the non-fatal offences against the person comply with either fair labelling or correspondence.

**AO3**

- Analysis and evaluation of the principle of fair labelling and the principle of correspondence as reflected in society; possible link to moral stigma and appropriate punishments.
- Analysis and evaluation of the significance of fair labelling and correspondence within the drafting of a law. For example; it is argued that it is unfair to label a person a 'murderer' if they did not intend to kill.
- Analysis of fair labelling in relation to the non-fatal offences may include discussion of the need for the 'label' to differentiate the offence committed from other offences through the comparison of s47 OAPA 1861 or s18/s20 OAPA 1861.
- Analysis of correspondence in relation to the non-fatal offences. For example, discussion of s47 or s20 OAPA non-compliance as liability can arise when the harm intended/foreseen was less than the harm caused.

Credit any other relevant point(s).

<b>10</b>	Consider the criminal liability of Elijah for the murder of Fern <b>and</b> her unborn child <b>and</b> for the attempted murder of Gianni.	<b>[30 marks]</b>
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**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b> <b>Band 5</b>	Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority. There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario. An excellent legal argument is presented using appropriate terminology. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
<b>19–24</b> <b>Band 4</b>	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority. There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario. A good legal argument is presented using appropriate terminology. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
<b>13–18</b> <b>Band 3</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority. There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.
<b>7–12</b> <b>Band 2</b>	Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority. There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario. A limited legal argument is presented using little appropriate terminology. Some reasoning is attempted which leads to a limited conclusion.
<b>1–6</b> <b>Band 1</b>	Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority. There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario. A fragmented legal argument is attempted. No chain of reasoning is attempted.
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
30	0	30

**Indicative content****AO1**

- Identification and outline explanation of the actus reus and mens rea for murder (unlawful killing, reasonable creature in being, under the Queen's peace with malice aforethought) including identification of causation issues.
- Identification and outline explanation of the specific defence to murder of diminished responsibility.
- Identification and outline explanation of attempted murder.
- Identification and outline explanation of the insanity defence as an alternative to diminished responsibility and/or as a defence to attempted murder.
- Reference to appropriate supporting case and statutory authority, for example, s2 Homicide Act 1957, s52 Coroners and Justice Act 2009, s1(1) of the Criminal Attempts Act 1981.
- Use of supporting case authority may include: **R v Malcherek**, **R v Vickers**, **R v Mohan**, **R v Woollin**, **R v Blaue**, **R v Byrne**, **R v Golds**, **M'Naghten**, **R v Windle**, **R v Gullefer**, **R v Campbell**, **R v Jones**, **R v White**.

**AO2**

- Application of the facts to suggest that Elijah's conduct has satisfied the actus reus for murder in relation to Fern as he pushed her down the stairs which brought about her death. However, he does not satisfy the actus reus for the murder of the unborn child or Gianni as they would not be considered, in law, to be 'creatures in being'.
- Application of the thin skull rule in relation to Fern's pre-existing brain condition to conclude that the condition would not break the chain of causation.
- Application of the facts to suggest that 'forcibly' pushing Fern down the 'steep' staircase indicates that Elijah directly intended to kill or at the least cause serious harm. Alternative application may suggest that Elijah only intended some harm rather than serious harm leading to consideration of oblique intention to conclude that death or serious injury is a virtually certain consequence of his conduct and question whether Elijah realised this.
- Application to suggest that Elijah could raise the defence of diminished responsibility due to his 'extreme paranoia' as a recognised medical condition. Conclusion to suggest that the paranoia had substantially impaired his ability to form a rational judgement evident in his belief that his neighbours were trying to kill him and that there is a sufficient causal connection between the extreme paranoia and the conduct. If the defence is successful, Elijah will be found guilty of voluntary manslaughter.
- Application of the law on attempts to suggest that when Elijah entered the house with a knife this could be seen as mere preparation but that when he stabbed Gianni he 'embarked on the crime proper' and satisfied the actus reus for attempted murder.
- Application of the law on attempts to suggest that Elijah had the higher level of mens rea required in that he had intention to kill as he stabbed Gianni several times.
- Application of the law on attempting to do the impossible as in this scenario Gianni was already dead it would be impossible for Elijah to commit the offence of murder.
- Application to conclude that Elijah did an act which was more than merely preparatory to the commission of the offence and that he had the required mens rea and so would be criminally liable for the attempted murder of Gianni.

- Application of the rules of insanity could be raised in relation to the murder of Fern and the attempted murder of Gianni to suggest that the ‘extreme paranoia’ is a disease of the mind which could have impaired his ability to understand the nature of his conduct or know that his conduct was legally wrong. If the defence is successful the jury will be directed to return the special verdict of ‘not guilty by reason of insanity’.

**AO3**

- Analysis and evaluation of the rules relating to reasonable creature in being (**A-G Ref NO. 3 OF 1994**).
- Analysis and evaluation of the rules of causation in relation to the thin skull rule.
- Analysis and evaluation of malice aforethought, expressed or implied along with direct or oblique intention.
- Analysis and evaluation of the defence of diminished responsibility.
- Analysis and evaluation of the defence of insanity.
- Analysis and evaluation of the law on attempts, the required mens rea (**R v Whybrow**) and the law related to attempting to do the impossible (**R v Shivpuri**).
- Analysis and evaluation of the defence of insanity in relation to the murder and attempted murder and its effect if successful.

Credit any other relevant point(s).

ICG's

1. Murder
2. Attempted murder
3. Insanity and/ diminished responsibility

**11** Consider the criminal liability of Hayden in relation to the bicycle **and** for the injury suffered by Ian.

If Hayden were to face trial at the Crown Court, assess the role that barristers may carry out during the trial.

**[30 marks]**

**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the English legal system and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>There is excellent analysis and evaluation of legal concepts and issues.</p> <p>Excellent drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the English legal system and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>There is good analysis and evaluation of legal concepts and issues.</p> <p>Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology.</p> <p>There is satisfactory analysis and evaluation of legal concepts and issues.</p> <p>Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>



<p><b>7–12</b></p> <p><b>Band 2</b></p>	<p>Knowledge is limited and demonstrates a limited understanding of the English legal system and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>There is limited analysis and evaluation of legal concepts and issues.</p> <p>Limited drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<p><b>1–6</b></p> <p><b>Band 1</b></p>	<p>Knowledge is minimal and demonstrates a minimal understanding of the English legal system and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>There is minimal analysis and evaluation of legal concepts and issues.</p> <p>Minimal drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
23	7	30

**Indicative content**

**AO1**

- Identification and outline explanation of the offence of theft under the Theft Act 1968.
- Identification and outline explanation of an offence under s47 of the Offences Against the Person Act 1861.
- Identification and outline explanation of the defence of automatism.
- Identification of the role of barristers at a Crown Court trial.
- Use of supporting case authority may include: **R v Morris, R v Vinall, R v Woodman, Ivey v Genting Casino Ltd/ Barton and Booth v R, Collins v Wilcock, Chan Fook, Roberts, R v T, Hill v Baxter.**

**AO2**

- Application of the facts to suggest that there was an appropriation through the initial taking of the bicycle from the side of a house, it does not matter that it was next to charity collection bags. The good condition of the bicycle suggests that it was not to be given away and so the property is still in the possession/control of the owner and was not abandoned.
- Application of the mens rea requirement of dishonesty to the facts to conclude that Hayden's conduct was dishonest as taking a bicycle, in good condition from outside a house would be seen as dishonest according to the ordinary standards of reasonable and honest people.
- Application of the mens rea requirement of intention to permanently deprive to question whether Hayden had intention to return the bicycle when he originally took it. The mens rea is not satisfied if

he was simply borrowing the property. An alternative argument is that as the bicycle was in 'good condition; Hayden did not intend to return it but instead keep it for himself.

- Credit given to an alternative application of the facts to suggest that the dishonest, appropriation requirements are satisfied through the subsequent actions of Hayden when he threw the bicycle into the river.
- Conclude to suggest that that the intention to permanently deprive could have been formed when the bicycle was first taken or at the time of the subsequent damage and disposal.
- Application of the actus reus and mens rea for s47 OAPA 1861 through battery to suggest that when Hayden 'punched' Ian he applied unlawful force to another and this caused actual bodily harm in the form of soreness and bruising to the face, it is likely that he intended/was reckless based on the facts.
- Application to the facts to suggest that the defence of automatism may be raised in relation to the theft, if completed after the crash and the attack on Ian. Argument to focus on non-insane automatism as a result of the head injury he suffered during the crash which will be seen as external factor.
- Application to suggest that the act of throwing the bicycle is unlikely to be seen as an involuntary action as he was able to pick the bicycle up and throw it over the railings, this would suggest some partial control.
- Application of the defence in relation to the actual bodily harm to suggest that the defence will only succeed if it is proven that the punch was an involuntary action, possibly a reflex reaction.

### AO3

- Analysis and evaluation of the rules on appropriation of property (s3(1) TA 1968) and belonging to another (s5(1) TA 1968) (Possible reference to **R on the application of Ricketts v Basildon Magistrates' Court** (2010)).
- Analysis and evaluation of the dishonesty requirement (s1(2) TA 1968) and the test from **Ivey v Genting Casino Ltd/ Barton and Booth v R, R v Small**.
- Analysis and evaluation of the mens rea; 'intention of permanently depriving' (s6 TA 1968) **R v Lloyd**.
- Analysis and evaluation of the requirements for s47 OAPA 1861.
- Analysis and evaluation of the complete defence of automatism and its legal effect on the assault occasioning actual bodily harm (and possibly the theft)
- Analysis and evaluation of the role of barristers within a criminal trial. Role may include: presenting opening and closing statements, cross examination of witnesses, acting as an advocate for the CPS, proving the case beyond all reasonable doubt or attempting to raise reasonable doubt, working on the instruction of a solicitor, presenting a plea in mitigation in the event that the defendant is found guilty etc.

Credit any other relevant point(s).

### ICG's

1. Theft
2. s47 and automatism
3. Non substantive element

**Assessment Objectives Grid**

	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>	<b>Total</b>
1	1			<b>1</b>
2	1			<b>1</b>
3	1			<b>1</b>
4	1			<b>1</b>
5	1			<b>1</b>
6	5			<b>5</b>
7	2	3		<b>5</b>
8	3	4	3	<b>10</b>
9	5		10	<b>15</b>
10	10	10	10	<b>30</b>
11	10	10	10	<b>30</b>
<b>Paper Total</b>	<b>40</b>	<b>27</b>	<b>33</b>	<b>100</b>

**Distribution of marks for substantive and non-substantive law**

<b>Question</b>	<b>Substantive</b>	<b>Non-substantive</b>	<b>Total Marks</b>
1	1		1
2	1		1
3		1	1
4		1	1
5		1	1
6		5	5
7	5		5
8	10		10
9	5	10	15
10	30		30
11	23	7	30
<b>Total</b>	<b>75</b>	<b>25</b>	<b>100</b>
<b>Total %</b>	<b>75</b>	<b>25</b>	<b>100</b>

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**A-level**  
**LAW**  
**7162/1**

Paper 1

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**Mark scheme**

June 2022

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Version: 1.0 Final Mark Scheme



Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

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## Level of response marking instructions

Level of response mark schemes are broken down into levels, each of which has a descriptor. The descriptor for the level shows the average performance for the level. There are marks in each level.

Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

### Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

### Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

**01** Which of the following **best** describes the mens rea for the offence of assault (battery) occasioning actual bodily harm?  
**[1 mark]**

**Marks for this question: AO1 = 1**

**A** Intention or recklessness as to causing fear of force or applying force.

**02** Which of the following can be used as evidence to support a defence of loss of control under s54 and s55 of the Coroners and Justice Act 2009?  
**[1 mark]**

**Marks for this question: AO1 = 1**

**A** The defendant acted due to fear of serious violence.

**03** When interpreting a statute, which of the following requires a judge to give words their plain, ordinary meaning even if the outcome is absurd?  
**[1 mark]**

**Marks for this question: AO1 = 1**

**B** Literal Rule.

**04** Which statement **best** describes a 'binding precedent' within the doctrine of judicial precedent?  
**[1 mark]**

**Marks for this question: AO1 = 1**

**C** A judgment made in a previous case which must be followed by judges in later cases.

**05** Public funding is sometimes available for criminal cases, as long as the 'interests of justice' test is met. Which of the following is **not** relevant to the 'interests of justice' test?  
**[1 mark]**

**Marks for this question: AO1 = 1**

**B** The financial status of the defendant.



<b>06</b>	Explain any <b>two</b> features that are essential to the operation of judicial precedent. <b>[5 marks]</b>
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**Marks for this question: AO1 = 5**

	Levels of response mark scheme 5 marks – AO1 only
Mark range	Description
<b>4–5</b> <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of the English legal system. Where appropriate a good example of a case to illustrate suggested reasons.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system. Where appropriate a satisfactory example of a case to illustrate reasons.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of the English legal system. Where appropriate a limited example of a case to illustrate reasons.
<b>0</b>	Nothing worthy of credit.

#### Indicative content

- Identification and explanation of the principle of stare decisis.
- Identification and explanation of the ratio decidendi of the case.
- Identification and explanation of the hierarchy of the courts.
- Identification and explanation of law reporting.

Credit any other relevant point(s).

Note: Answers which do not explain two features cannot achieve marks higher than band 2.

<b>07</b>	Using the rules on duress, suggest why, in law, the defence of duress is likely to <b>fail</b> if raised by Alice at her trial.
	<b>[5 marks]</b>

**Marks for this question: AO1 = 2 and AO2 = 3**

	<b>Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)</b>
<b>Mark range</b>	<b>Description</b>
<b>4–5</b> <b>Band 3</b>	Good outline explanation of legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory application of legal rules and principles to the scenario. Satisfactory explanation of a relevant case to support the application.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of legal rules and principles.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- The defence of duress may not be available if the defendant entered into a voluntary association.
- The defence of duress will not be available where the defendant puts themselves in a position where they foresaw (or should have foreseen) the risk of being subjected to any compulsion by threats of violence.
- Appropriate supporting case law may include: **Sharp, Hasan, Ali**.

#### **AO2**

- Application of the law to suggest that Alice voluntarily joined and stayed part of a criminal gang.
- Application to suggest that Alice had been a member of the gang for several years and knew that they used violence and so she should have known or foreseen that threats could be used against herself.
- Application to conclude that the defence of duress will fail.

Credit any other relevant point(s).

Note: Some credit can be given for other relevant elements of duress. Such an approach on its own would achieve max 2 marks.

<b>08</b>	Advise Carla of her criminal liability for the murder of Emma.	<b>[10 marks]</b>
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**Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3**

	<b>Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)</b>
<b>Mark range</b>	<b>Description</b>
<b>7–10</b> <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario. Good explanation of relevant legal authority to support the application. A good legal argument is presented using appropriate terminology to support advice.
<b>3–6</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. Satisfactory explanation of relevant legal authority to support the application. A satisfactory legal argument is presented using some appropriate terminology to support advice.
<b>1–2</b> <b>Band 1</b>	A limited demonstration of knowledge. Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Identification and outline explanation of the actus reus and mens rea for murder.
- Identification and outline explanation of the concept of transferred malice.
- Appropriate supporting case law may include: **Vickers, Mohan, Woollin, Matthews and Alleyne, Latimer, Gnango.**

#### **AO2**

- Application to the facts to suggest that the actus reus is completed when the bullet hits and kills Emma.
- Application to the facts to suggest that Carla had intention to kill or at the least cause serious harm. Developed to discuss that intention could be either direct or oblique (indirect). Possible application to suggest direct intention as Carla was armed with a weapon and fired three times into the doorway of a crowded restaurant where Denton was standing.
- Alternative application to suggest that Carla's aim was to warn/scare rather than cause death or serious injury. Oblique (indirect) intention satisfied if in firing three shots towards people Carla may have foreseen death or serious injury as a virtual certainty.
- Application to the facts to suggest that the mens rea formed in relation to Denton is transferred to Emma and conclude that Carla will be guilty of murder.

**AO3**

- Analysis of the mens rea for murder: intention to kill or cause serious harm, direct/oblique intention.
- Analysis of the principle of transferred malice.

Credit any other relevant point(s).

Note: Answers which do not address transferred malice. Max 7 marks.

<b>09</b>	Examine the meaning and importance of ‘fault’ within criminal law and discuss the extent to which the rules of causation are evidence of a requirement for fault in criminal liability.
	<b>[15 marks]</b>

**Marks for this question: AO1 = 5 and AO3 = 10**

	<b>Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>13–15</b> <b>Band 5</b>	Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority. Excellent analysis and evaluation of legal rules and principles; concepts and issues. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
<b>10–12</b> <b>Band 4</b>	Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority. Good analysis and evaluation of legal rules and principles; concepts and issues. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
<b>7–9</b> <b>Band 3</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority. Satisfactory analysis and evaluation of legal rules and principles; concepts and issues. Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A chain of reasoning starts to develop which leads to a partially justified conclusion.
<b>4–6</b> <b>Band 2</b>	Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority. Limited analysis and evaluation of legal rules and principles; concepts and issues. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.
<b>1–3</b> <b>Band 1</b>	Knowledge is minimal and demonstrates a minimal understanding of the Nature of law and legal rules and principles. Minimal selection and use of relevant legal authority. Minimal analysis and evaluation of legal concepts and issues. No chain of reasoning is attempted.
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
5	10	15

**Indicative content****AO1**

- Identification and brief explanation of the meaning and importance of fault in criminal law in terms of blameworthiness, wrongdoing, etc.
- Identification and brief explanation of fault as a way of measuring legal responsibility and assigning punishment.
- Identification of possible bases of fault and its absence in criminal law: voluntariness of conduct, intention, recklessness, strict liability etc.
- Identification and brief explanation of causation.
- Appropriate case law may include: **Hill v Baxter, White, Williams, Jordan, Roberts, Marjoram.**

**AO3**

- Analysis of the link between fault and criminal responsibility.
- Analysis of the notion of a hierarchy of fault within a criminal law context. Possible discussion of levels of responsibility based on conduct, e.g voluntariness and mens rea, e.g murder/manslaughter, strict liability offences etc.
- Analysis of blameworthiness possibly illustrated through mens rea and the levels of blameworthiness attached to it and the availability of defences and types of sentence.
- Analysis and evaluation of the concept of causation and how it operates as an essential component when establishing fault in criminal law by connecting the defendant's conduct to a harmful consequence. Developed to analyse factual and legal causation.

Credit any other relevant point(s).

ICG's

- 1) Fault
- 2) Causation

<b>10</b>	Consider the criminal liability of Flynn for the incident with the crowd. Consider the criminal liability of Flynn <b>and</b> the doctor for the involuntary manslaughter of Ginny. <b>[30 marks]</b>
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**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b>  <b>Band 5</b>	Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority. There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario. An excellent legal argument is presented using appropriate terminology. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
<b>19–24</b>  <b>Band 4</b>	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority. There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario. A good legal argument is presented using appropriate terminology. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
<b>13–18</b>  <b>Band 3</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority. There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.
<b>7–12</b>  <b>Band 2</b>	Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority. There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario. A limited legal argument is presented using little appropriate terminology. Some reasoning is attempted which leads to a limited conclusion.
<b>1–6</b>  <b>Band 1</b>	Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority. There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario. A fragmented legal argument is attempted. No chain of reasoning is attempted.
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
30	0	30

**Indicative content****AO1**

- Identification and outline explanation of the common law offence of assault.
- Identification and outline explanation of the offence of unlawful act manslaughter arising from the battery, including the rules on causation.
- Identification and outline explanation of the defence of insanity.
- Possible identification and outline explanation of the availability of self-defence.
- Identification and outline explanation of the offence of gross negligence manslaughter.
- Appropriate supporting case law may include: **Logdon, Cunningham, Church, Williams, Roberts, DPP v Newbury and Jones, Mohan, M’Naghten, Johnson, Oye, Adomako, Misra and Srivastava.**

**AO2**

- Application to the facts to suggest that Flynn committed the actus reus for assault when he flew the plane towards the crowd causing them to panic (apprehend) and run away as they feared immediate unlawful personal violence.
- Application to suggest that Flynn had direct intention to cause fear as he flew the plane towards the crowd. Credit alternative application to suggest that he was subjectively reckless as he flew the plane ‘low’ towards the crowd.
- Application to suggest that flying the plane and hitting Ginny was an unlawful act (battery). Application of the objective standard to suggest that this was a dangerous act as there was a risk that someone could be harmed (being struck by the plane etc).
- Application of causation to consider whether Flynn was the cause of Ginny’s death.
- Credit alternative argument that the doctor’s intervention could, although unlikely, remove liability from Flynn.
- Application to the facts to suggest that Flynn was reckless as to the unlawful act by flying a plane towards a crowd and hitting Ginny. Conclude that he has committed unlawful act manslaughter.
- Application to the facts to suggest that the ‘paranoid personality disorder’ could amount to a disease of the mind. At the time of the incident Flynn was ‘distressed’ as his condition may have made him believe that the crowd intended to harm him, which may have prevented him from understanding the nature of the act committed or that it was legally wrong, especially if he believed that he was acting in self-defence. Application to conclude that if the defence is successful, Flynn will receive the special verdict for both the assault and unlawful act manslaughter charges.
- Application to suggest that the doctor committed gross negligence manslaughter by failing to diagnose a seemingly obvious infection ‘not healing’ ‘red’, ‘painful’. Conduct is gross as there is a risk of death.



**AO3**

- Evaluation and analysis of the mens rea of assault: intention and subjective recklessness.
- Evaluation and analysis of the requirements for unlawful act manslaughter. In particular the objective test and causation issues raised/possible breaks in the chain of causation.
- Evaluation and analysis of the elements of insanity to establish if the defendant knew the nature of the act or that it was legally wrong, including possible recognition of self-defence, and the effect of the defence if successful.
- Evaluation and analysis of the requirement that the negligence be 'gross' within gross negligence manslaughter. Possible use of authority to develop point: **Adomako** 'conduct was so bad in all the circumstances' or in the cases of **Sellu** and **Bawa-Garba** "the circumstances of the breach were truly exceptionally bad and so reprehensible ...".

Credit any other relevant point(s).

**ICG's**

- 1) Assault
- 2) Unlawful act manslaughter
- 3) Insanity
- 4) Gross negligence manslaughter

- 11** Consider Harry's criminal liability for the theft of the information contained in the list **and** Ian's criminal liability for property offences in relation to the mobile phone.

Assuming that Harry was convicted of any offence, assess the main aims of sentencing that a judge is likely to consider.

**[30 marks]**

**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the English legal system and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>There is excellent analysis and evaluation of legal concepts and issues.</p> <p>Excellent drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the English legal system and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>There is good analysis and evaluation of legal concepts and issues.</p> <p>Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology.</p> <p>There is satisfactory analysis and evaluation of legal concepts and issues.</p> <p>Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>

<p><b>7–12</b></p> <p><b>Band 2</b></p>	<p>Knowledge is limited and demonstrates a limited understanding of the English legal system and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>There is limited analysis and evaluation of legal concepts and issues.</p> <p>Limited drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<p><b>1–6</b></p> <p><b>Band 1</b></p>	<p>Knowledge is minimal and demonstrates a minimal understanding of the English legal system and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>There is minimal analysis and evaluation of legal concepts and issues.</p> <p>Minimal drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
23	7	30

**Indicative content**

**AO1**

- Identification and outline explanation of the elements of the offence of theft in relation to appropriation, property and belonging to another issues.
- Identification and outline explanation of the mens rea for theft.
- Identification and outline explanation of the elements of the offence of robbery.
- Identification and outline explanation of the defence of intoxication.
- Identification and outline explanation of the main aims of sentencing. Examples include: the punishment of offenders, the reduction of crime (including its reduction by deterrence), the reform and rehabilitation of offenders, the protection of the public, and the making of reparation by offenders to persons affected by their offences.
- Appropriate supporting case law may include: **Hall, Davidge v Bunnett, Oxford v Moss, Barton, Booth v R, Ivey v Genting Casino Ltd, Dawson and James, Sheehan and Moore, Attorney – General for Northern Ireland v Gallagher.**

## AO2

- Application to the facts to suggest that taking photographs of the list of customers will not be considered theft as it is confidential information and would not be considered property.
- Application to the facts to discuss the possibility that Ian may have committed a robbery in relation to the mobile phone. Application to suggest that Ian was not initially dishonest as he mistakenly believed that the phone was his but that the theft was completed later when Ian realised his mistake but decided to 'sell it to one of his friends'.
- Credit an alternative argument to suggest that Ian may not have committed a completed theft if he can successfully argue that he was not dishonest as he believed that he had a right in law to take the phone to cover the cost of the missing goods, although this is unlikely to succeed. S2(1)(a).
- Application to suggest that Ian intended to permanently deprive Harry of the phone when he decided to sell it rather than return it.
- Application to the facts to suggest that the force used (pushing Harry to the ground) could be seen as force used in order to steal as this caused Ian's phone to fall from his pocket. Credit an alternative application to suggest that the push was separate and not done in order to steal. This is evidenced by Ian believing that the phone was his at the time of the appropriation. Conclude that there can be no robbery if force was not used in order to steal.
- Application to the facts to suggest that Ian may argue the defence of voluntary intoxication as he had been drinking large glasses of wine. As the offence of robbery is a specific intent offence Ian could argue that the alcohol removed his ability to form the mens rea for the robbery and/or theft.
- Application to suggest that the effects of the alcohol may have diminished by the time that he realised the mobile phone was not his and so removing the availability of the defence. Credit alternative application to the facts to suggest that the intoxication was such that Ian could not form the mens rea ('feeling confused'), concluding that there would be no conviction.

## AO3

- Evaluation and analysis of 'property' under s4(1).
- Evaluation and analysis of the mens rea of theft using Ivey/Booth (dishonesty) and conduct not seen as dishonest under s2.
- Evaluation and analysis of intention to deprive the other using s6.
- Evaluation and analysis of robbery and the requirement that there be a completed theft.
- Evaluation and analysis of the requirement that force be used in order to steal.
- Evaluation and analysis of the defence of voluntary intoxication in relation to the specific intent offence of theft and/or robbery and its legal effect.
- Analysis and evaluation of the main aims of sentencing.

Credit any other relevant point(s).

ICG's

- 1) Theft
- 2) Robbery
- 3) Intoxication
- 4) Aims of sentencing

**Assessment Objectives Grid**

	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>	<b>Total</b>
1	1			<b>1</b>
2	1			<b>1</b>
3	1			<b>1</b>
4	1			<b>1</b>
5	1			<b>1</b>
6	5			<b>5</b>
7	2	3		<b>5</b>
8	3	4	3	<b>10</b>
9	5		10	<b>15</b>
10	10	10	10	<b>30</b>
11	10	10	10	<b>30</b>
<b>Paper Total</b>	<b>40</b>	<b>27</b>	<b>33</b>	<b>100</b>

**Distribution of marks for substantive and non-substantive law**

<b>Question</b>	<b>Substantive</b>	<b>Non-substantive</b>	<b>Total Marks</b>
1	1		1
2	1		1
3		1	1
4		1	1
5		1	1
6		5	5
7	5		5
8	10		10
9	5	10	15
10	30		30
11	23	7	30
<b>Total</b>	<b>75</b>	<b>25</b>	<b>100</b>
<b>Total %</b>	<b>75</b>	<b>25</b>	<b>100</b>

**A-level  
LAW  
7162/1**

Paper 1

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**Mark scheme**

June 2023

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Version: 1.0 Final



Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

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## Level of response marking instructions

Level of response mark schemes are broken down into levels, each of which has a descriptor. The descriptor for the level shows the average performance for the level. There are marks in each level.

Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

### Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

### Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

**01** Which **one** of the following can be used as evidence for the defence of diminished responsibility under s2 of the Homicide Act 1957?

[1 mark]

**Marks for this question: AO1 = 1**

**D** The defendant's mental functioning was substantially impaired.

**02** Which **one** of the following statements about offences of strict liability is **true**?

[1 mark]

**Marks for this question: AO1 = 1**

**A** A person may be liable even though they took all reasonable care.

**03** Which **one** of the following statements about the role of magistrates is **false**?

[1 mark]

**Marks for this question: AO1 = 1**

**C** Magistrates can try indictable only offences.

**04** Which **one** of the following is the **best** reason for State funding (legal aid) being granted for a trial in a criminal case?

[1 mark]

**Marks for this question: AO1 = 1**

**D** The defendant's trial will involve consideration of a substantial point of law.

**05** Which **one** of the following is an example of an aggravating factor in sentencing?

[1 mark]

**Marks for this question: AO1 = 1**

**D** The defendant used a weapon during the offence.

**06** Explain **two** aspects of the role of the judge in a criminal case.

**[5 marks]**

**Marks for this question: AO1 = 5**

	<b>Levels of response mark scheme 5 marks – AO1 only</b>
<b>Mark range</b>	<b>Description</b>
<b>4–5</b> <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of the English legal system. Where appropriate a good example of a case to illustrate suggested reasons.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system. Where appropriate a satisfactory example of a case to illustrate reasons.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of the English legal system. Where appropriate a limited example of a case to illustrate reasons.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

Explanation of any two from the following, concerning the role of the judge:

- conducting a pre-trial preparation hearing: determining any pre-trial issues, e.g. fixing a trial date, granting of bail etc
- controlling the conduct of the trial: opportunity for each side to present its case fully; rulings on the admissibility of evidence
- determining the interpretation and application of law: giving directions on law to the jury in a Crown Court trial
- summing-up the evidence in the case in a Crown Court trial
- sentencing in consequence of a conviction or guilty plea.

Credit any other relevant point(s).

If only one aspect is dealt with max band 2.

<b>07</b>	Suggest why Bina does not satisfy the required actus reus for the offence of battery against Caleb.	<b>[5 marks]</b>
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**Marks for this question: AO1 = 2 and AO2 = 3**

	<b>Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)</b>
<b>Mark range</b>	<b>Description</b>
<b>4–5</b> <b>Band 3</b>	Good outline explanation of legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory application of legal rules and principles to the scenario. Satisfactory explanation of a relevant case to support the application.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of legal rules and principles.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Identification and outline explanation of the actus reus which requires the application of unlawful force to another.
- Identification and outline explanation of the requirement that the act be performed voluntarily. Credit alternative discussion of the defence of automatism.
- Appropriate supporting case law may include: **Hill v Baxter**, **Broome v Perkins**.

#### **AO2**

- Application to suggest that Bina's contact with Caleb, when she fell against him, may amount to the application of unlawful force to another.
- Application to suggest that because of the initial push, Bina had no control over her conduct.
- Application to conclude that the actus reus is not satisfied as it was carried out involuntarily.

Credit any other relevant point(s).

<b>08</b>	Advise Dan of his criminal liability in relation to the theft of the plants <b>and</b> the extra £10. <b>[10 marks]</b>
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**Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3**

	Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)
Mark range	Description
<b>7–10</b>  <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario. Good explanation of relevant legal authority to support the application. A good legal argument is presented using appropriate terminology to support advice.
<b>3–6</b>  <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. Satisfactory explanation of relevant legal authority to support the application. A satisfactory legal argument is presented using some appropriate terminology to support advice.
<b>1–2</b>  <b>Band 1</b>	A limited demonstration of knowledge. Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario.
<b>0</b>	Nothing worthy of credit.

### Indicative content

#### AO1

- Identification and outline explanation of the actus reus of the offence of theft; appropriation, property, belonging to another.
- Identification and outline explanation of the mens rea of the offence of theft; dishonest, intention to permanently deprive.
- Appropriate supporting case law and statutory authority may include – **R v Morris**, **R v Gomez**, **Ivey v Genting Casino Ltd**, **Barton and Booth v R, Attorney-General's Reference (No 1)**, **R v Robinson**, **Theft Act 1968**.

**AO2**

- Application to suggest that there is an appropriation when Dan moves and replants the plants in his own garden. A further appropriation occurred when Dan took the additional £10.
- Application to suggest that the additional £10 and the plants, when severed from the land, would amount to property.
- Application to suggest that the additional £10 and the plants still belong to Emma regardless of her instruction to place the plants in her rubbish bin.
- Application to suggest that Dan was dishonest when he removed the plants as he did this without permission and when he was 'left alone' in the garden. Credit alternative argument to suggest that Dan may feel Emma would have allowed him to take the plants as she intended to throw them away.
- Application to suggest that Dan may argue against dishonesty in relation to the additional £10 as he believed he was entitled to the money although it is likely that ordinary, reasonable people would see his conduct as dishonest.
- Application to suggest that there may be intention to permanently deprive Emma of the plants, by replanting them on his own land, and the money by removing it from the bag.

**AO3**

- Analysis and evaluation of the property rules under s4(1) and s4(2)(b) of the Theft Act 1968, with reference to plants in a domestic rather than wild setting and the issue of land that cannot be stolen unless the defendant appropriates anything forming part of the land by severing it.
- Analysis and evaluation of the provisions that a person will not be dishonest under s2(1). Further development to include the objective test from **Barton and Booth**.
- Analysis and evaluation considering the intention to permanently deprive rules in theft.

Credit any other relevant point(s).

<b>09</b>	Examine the meaning of ‘justice’ and discuss the extent to which the law on non-fatal offences may achieve justice.	<b>[15 marks]</b>
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**Marks for this question: AO1 = 5 and AO3 = 10**

	<b>Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>13–15</b> <b>Band 5</b>	Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority. Excellent analysis and evaluation of legal rules and principles; concepts and issues. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
<b>10–12</b> <b>Band 4</b>	Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority. Good analysis and evaluation of legal rules and principles; concepts and issues. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
<b>7–9</b> <b>Band 3</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority. Satisfactory analysis and evaluation of legal rules and principles; concepts and issues. Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A chain of reasoning starts to develop which leads to a partially justified conclusion.
<b>4–6</b> <b>Band 2</b>	Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority. Limited analysis and evaluation of legal rules and principles; concepts and issues. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.
<b>1–3</b> <b>Band 1</b>	Knowledge is minimal and demonstrates a minimal understanding of the Nature of law and legal rules and principles. Minimal selection and use of relevant legal authority. Minimal analysis and evaluation of legal concepts and issues. No chain of reasoning is attempted.
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
5	10	15

**Indicative content****AO1**

- Identification and brief description of the different possible meanings of 'justice', for example, justice in terms of basic fairness or equality of treatment.
- Identification and brief explanation of the rules of natural justice.
- Identification of different theories of justice, e.g. distributive justice, utilitarianism and social justice.
- Identification and brief explanation of the philosophies behind the theories and the thinkers who have explained them, e.g. Aristotle, Marx, Bentham, Rawls etc.
- Identification and brief explanation of the relevant non-fatal offences being considered.

**AO3**

- Analysis of the importance of philosophical theories of justice and how they have been embedded within the criminal justice system.
- Analysis of procedural justice and/or substantive justice
- Analysis of common law and/or statutory non-fatal offences in the context of whether justice is achieved, e.g. analysis of s47 and s20 offences where there is constructive liability; analysis of whether s47 and s20 offences should carry the same maximum sentence; analysis of justice for s18 where intent must be satisfied and D could get a life sentence; the issue of multiple offences under single sections of the relevant legislation.
- Use of supporting case authority to evaluate the analysis above, for example:  
**R v Chan-Fook, T v DPP, R v Ireland, R v Burstow, R v Mowatt, R v Savage**

Credit any other relevant point(s).

**ICGs**

1. Justice
2. Non-fatal offences



**10** Consider the criminal liability of Gabe for the death of Felix **and** of Gabe for the murder of Harriet **and** her unborn child.

**[30 marks]**

**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b> <b>Band 5</b>	Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority. There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario. An excellent legal argument is presented using appropriate terminology. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
<b>19–24</b> <b>Band 4</b>	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority. There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario. A good legal argument is presented using appropriate terminology. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
<b>13–18</b> <b>Band 3</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority. There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.
<b>7–12</b> <b>Band 2</b>	Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority. There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario. A limited legal argument is presented using little appropriate terminology. Some reasoning is attempted which leads to a limited conclusion.
<b>1–6</b> <b>Band 1</b>	Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority. There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario. A fragmented legal argument is attempted. No chain of reasoning is attempted.
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
30	0	30

**Indicative content****AO1**

- Identification and outline explanation of the elements of the offence of involuntary manslaughter, as gross negligence manslaughter, including causation issues. Credit can be given to alternative explanation of unlawful act manslaughter.
- Identification and outline explanation of the elements of the offence of murder.
- Identification and outline explanation of the elements of the defence of loss of control (Coroners and Justice Act 2009 s54): loss of self-control (note considered desire for revenge); qualifying trigger; a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D (the objective test).
- Appropriate supporting case law may include: **R v Adomako**, **R v Wacker**, **R v Misra and Srivastava**, **Mohan**, **R v Jewell**, **R v Baillie**.

**AO2**

- Application to suggest that despite the illegal activity (trying to avoid the police) Gabe still owed a duty of care to Felix as he is the driver of the car, developed to suggest that he breached his duty by not checking on him during a three-hour car journey in hot conditions.
- Application to suggest that keeping a person in the boot of a car, may create an obvious risk of death due to the cramped conditions and lack of proper ventilation for three hours. Credit alternative well-reasoned argument.
- Application to suggest that Gabe's failure to check on Felix caused his death and that the underlying heart condition cannot be used to avoid liability (thin skull rule).
- Application of the test for gross negligence to suggest that Gabe's failure was so exceptionally bad in all the circumstances as to justify a conviction. Credit alternative to suggest that failing to check on an adult for three hours may not be exceptionally bad.
- Application to suggest that Gabe caused the death of Harriet by hitting her at speed with a car, developed to suggest that there is direct intention to kill or at the least cause serious harm as he accelerated towards her. There is a prima facie case of murder.
- Application to suggest that the unborn baby will not be classed as a human being and so the actus reus for murder in this instance is not satisfied.
- Application of the loss of self-control requirement to conclude that Gabe lost self-control when he saw Harriet filming and heard her mocking him.
- Application of the anger trigger requirement to argue that the 'things said and done', which included the laughter, filming and mocking comments, may have constituted circumstances of an extremely grave character, and caused D to have a justifiable sense of being seriously wronged.
- Application of the rules on the objective test to argue that Gabe's short-temper must be excluded from consideration but that all the other circumstances must be taken into account, with a conclusion that the requirement may/may not be satisfied.
- Application to conclude that a person of Gabe's age and gender may have acted in the same way and so the defence will succeed. Credit alternative to suggest the opposite.

**AO3**

- Analysis and evaluation of the rules relating to duty of care within gross negligence manslaughter, developed to consider voluntary assumption of duty and parties to an illegal act **R v Wacker**.

- Analysis and evaluation of the rules stating that the breach of duty must cause the death, developed to consider causation in relation to the thin skull rule **R v Blaue**.
- Analysis and evaluation to argue whether the breach is so exceptionally bad in all the circumstances that it amounts to a crime, not just civil law negligence.
- Analysis and evaluation of the rules relating to murder and reasonable creature in being **Attorney-General's Reference (No3)**.
- Analysis and evaluation of malice aforethought, express or implied, along with direct or oblique intention.
- Analysis and evaluation of the anger trigger requirements of circumstances of an extremely grave character, and justifiable sense of being seriously wronged.
- Analysis and evaluation of the standard of a person with a normal degree of tolerance and self-restraint and in the circumstances of D, and whether such a person might have reacted in the same or a similar way.

Credit any other relevant point(s).

### **ICGs**

1. Gross negligence manslaughter
2. Murder
3. Loss of control

- 11** Consider the criminal liability of Jalen in relation to the threat to Katie **and** the injuries suffered by Mary.
- Precedent will have played a significant role in the development of the rules of law applied to decide criminal liability in cases such as Jalen's. Assess the advantages of the doctrine of judicial precedent.
- [30 marks]**

**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the English legal system and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>There is excellent analysis and evaluation of legal concepts and issues.</p> <p>Excellent drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the English legal system and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>There is good analysis and evaluation of legal concepts and issues.</p> <p>Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology.</p> <p>There is satisfactory analysis and evaluation of legal concepts and issues.</p> <p>Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>

<p><b>7–12</b></p> <p><b>Band 2</b></p>	<p>Knowledge is limited and demonstrates a limited understanding of the English legal system and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>There is limited analysis and evaluation of legal concepts and issues.</p> <p>Limited drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<p><b>1–6</b></p> <p><b>Band 1</b></p>	<p>Knowledge is minimal and demonstrates a minimal understanding of the English legal system and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>There is minimal analysis and evaluation of legal concepts and issues.</p> <p>Minimal drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
23	7	30

**Indicative content**

**AO1**

- Identification and outline explanation of the offence of assault.
- Identification and outline explanation of the offence of wounding/GBH s18/s20.
- Identification and explanation of the defence of voluntary intoxication.
- Brief explanation of the advantages of judicial precedent: certainty, flexibility, specialism of the judges themselves etc.
- Use of legal authority including **R v Ireland**, **JCC v Eisenhower**, **Merritt v Merritt** and **Balfour v Balfour**

**AO2**

- Application of the actus reus of assault to suggest that Katie apprehended violence when she read the threatening letter as she was 'very frightened'. Further application to suggest that as the threat came in the form of a letter which instructed Katie to 'stay away from Leon' the actus reus may not be satisfied due to the issue of 'immediacy' in that the threat could not be carried out there and then and would not be carried out if Katie followed the instruction. Credit alternative conclusion.
- Application to suggest that the mens rea of assault is satisfied as the purpose of sending the letter was to 'scare' Katie.
- Application of the actus reus elements of wounding/GBH to suggest that 'deep cuts' would amount to serious harm/ wounding.

- Application to suggest that Jalen had intention to cause serious harm as she travelled to what she believed was Katie's house, armed with a rifle 'intending to injure her'. This is further evidenced by the fact that Jalen 'fired the rifle at the shape'. It would not matter that she believed the shape to be Katie but it was in fact Mary as in that moment she intended to cause/inflict harm upon the person. Credit alternative application.
- Application of the defence of voluntary intoxication to suggest that there will be no defence available for the s20 basic intent offence as the voluntary consumption of a 'large amount of alcohol' would be considered reckless.
- Further developed to suggest that the defence could be raised to the specific intent, s18 offence but would only be successful if Jalen's intoxication was such as to remove mens rea. Possible argument to suggest that after Jalen discovered that Leon had sent text messages to Katie, she became intoxicated in order to give her the courage to confront Katie. Possible conclusion to suggest that the defence is likely to fail as the facts suggest that Jalen was still able form the mens rea at the time of the attack. Credit alternative conclusion.

### AO3

- Analysis and evaluation of the offence of assault covering the issue of 'immediacy' **Smith v Superintendent of Woking Police, Tuberville v Savage.**
- Analysis of the mens rea for wounding/GBH with relevant evaluation of the offence being s18/s20 **R v Belfon.**
- Analysis and evaluation of the rules on intoxication in relation to both specific and basic intent offences **Majewski, Attorney-General NI v Gallagher.**
- Analysis and evaluation of the advantages of judicial precedent.

Credit any other relevant point(s).

### ICGs

1. Assault
2. s18 and/or s20
3. Intoxication
4. Judicial precedent

**Assessment Objectives Grid**

	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>	<b>Total</b>
1	1			<b>1</b>
2	1			<b>1</b>
3	1			<b>1</b>
4	1			<b>1</b>
5	1			<b>1</b>
6	5			<b>5</b>
7	2	3		<b>5</b>
8	3	4	3	<b>10</b>
9	5		10	<b>15</b>
10	10	10	10	<b>30</b>
11	10	10	10	<b>30</b>
<b>Paper Total</b>	<b>40</b>	<b>27</b>	<b>33</b>	<b>100</b>

**Distribution of marks for substantive and non-substantive law**

<b>Question</b>	<b>Substantive</b>	<b>Non-substantive</b>	<b>Total Marks</b>
1	1		1
2	1		1
3		1	1
4		1	1
5		1	1
6		5	5
7	5		5
8	10		10
9	5	10	15
10	30		30
11	23	7	30
<b>Total</b>	<b>75</b>	<b>25</b>	<b>100</b>
<b>Total %</b>	<b>75</b>	<b>25</b>	<b>100</b>