

GCE

Law

Unit **G154**: Criminal Law Special Study

Advanced GCE

Mark Scheme for June 2014

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

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

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

OCR will not enter into any discussion or correspondence in connection with this mark scheme.

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Annotations

Annotation	Meaning
BP	Blank Page – this annotation must be used on all blank pages within an answer booklet (structured or unstructured) and on each page of an additional object where there is no candidate response.
5	Q2 Synopticism
A2	Q2 AO2
C	Q1&3 Critical Point Q2 Case
CON	Q2&3 Conclusion
X	ALL Not correct
LNK	Q1 Linked case Q2 Link to source
R	ALL Not Relevant or Too vague Also no response or response achieves no credit
REP	ALL Repetition/or ‘noted’ where a case has already been used in the response
SC	Standardisation Rules
✓	Q1 Analytical Point Q2 AO1 Q3 Applied Point

Question		Answer	Marks	Guidance												
1*		<p>Potential answers MAY:</p> <p>Assessment Objective 2 (Analysis, evaluation and application)</p> <p>C Discuss that for the purposes of section 1(1) of the Theft Act 1968 an appropriation is a continuing act at all material times. If force is used '<i>immediately before or at the time of doing so</i>', whilst the appropriation continues, and the other ingredients of theft are present, the offence is one of robbery under section 8. The Court of Appeal felt the jury could conclude that there was such force and that it was a matter for them to decide on the facts.</p> <p>1 Discuss that as the defendants had forced their way into the victim's house one defendant put his hand over the victim's mouth while the other went upstairs to search for valuables; upstairs, one of the defendants took a jewellery box while downstairs, at the same time, the other defendant tied the victim up. The defendants argued that the theft had been complete before force was used. The jury at trial found the defendant guilty and/or therefore the defendants appealed on the basis that this was not robbery.</p> <p>2 The Court of Appeal ignored the literal approach in their decision. Arguably once the appropriation has taken place this would prevent the offence of robbery being committed. However, the decision in <i>Hale</i> would suggest a more purposive, rather than literal approach to interpretation of section 8.</p> <p>3 Discuss that in this case the appellants were more likely in the act of committing theft or burglary. The Court of Appeal stated that the jury were entitled to convict the defendant of robbery on the basis of one putting his hand over the victim's mouth to prevent her from calling for help, and/or also in the other tying her</p>	12	<table border="1"> <thead> <tr> <th>AO2 Level</th> <th>AO2 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>11-12</td> </tr> <tr> <td>4</td> <td>9-10</td> </tr> <tr> <td>3</td> <td>7-8</td> </tr> <tr> <td>2</td> <td>4-6</td> </tr> <tr> <td>1</td> <td>1-3</td> </tr> </tbody> </table> <p>Marks should be awarded as follows:</p> <ul style="list-style-type: none"> • Max 3 marks for the Critical point (C) • Max 6 marks for Analytical Points (1,2,3 etc) • Max 3 marks for a relevant Linked Case(s) (LNK) <p>Level 5 Responses are unlikely to achieve Level 5 without discussing the Critical Point, without using a linked case for the purpose of showing development, without making two analytical points and discussing the importance of the case.</p> <p>Re: 6 Please note credit can only be given for comment that has direct relevance to <i>Hale</i>. Hence any generic comment should not be credited.</p> <p>Re: Linked case (LNK) Please note credit can only be given for the link case where there is a specific link to <i>Hale</i>.</p>	AO2 Level	AO2 marks	5	11-12	4	9-10	3	7-8	2	4-6	1	1-3
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	<p>up while his accomplice separately went upstairs to steal. The Court of Appeal justifies this BUT only if the jury was satisfied that the force was used to enable the appellant or his accomplice to steal.</p> <p>4 Discuss that the defendant had argued that the judge had misdirected the jury. The appellant had argued that the theft was completed as soon as the jewellery box was seized. The Court of Appeal dismissed the appeal as there was no misdirection.</p> <p>5 Discuss that <i>Hale</i> agrees with the old law of robbery with violence. As contained in the Larceny Act 1916. This was clearly not the intention of Parliament in introducing the section and it is arguable that <i>Hale</i> goes against this intent.</p> <p>6 Consider any other relevant (to <i>Hale</i>) analytical comment. For example Ashworth's point in 2002 '<i>Robbery Reassessed</i>' whether the offence is necessary and instead charge similar defendant's with theft/burglary and a relevant NFOAP.</p> <p>LNK Link to any relevant case eg <i>Lockley, Gregory, Pitham & Heyl, Gomez</i> (1993) (instantaneous appropriation).</p>												
	<p>Assessment Objective 3 (Communication and presentation)</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	4	<table border="1"> <thead> <tr> <th>AO2 marks</th> <th>AO3 marks</th> </tr> </thead> <tbody> <tr> <td>10-12</td> <td>4</td> </tr> <tr> <td>7-9</td> <td>3</td> </tr> <tr> <td>4-6</td> <td>2</td> </tr> <tr> <td>1-3</td> <td>1</td> </tr> </tbody> </table>	AO2 marks	AO3 marks	10-12	4	7-9	3	4-6	2	1-3	1
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Question	Answer	Marks	Guidance												
2*	<p>Potential answers MAY:</p> <p>Assessment Objective 1 (Demonstrate knowledge and understanding)</p> <p>Explain that burglary is an offence under section 9(1) of the Theft Act 1968.</p> <p>Explain that there are two ways burglary can be committed:</p> <p>1. Section 9(1)(a) the defendant enters any building or part of a building as a trespasser and with intent to:</p> <ul style="list-style-type: none"> • Steal anything in the building • Inflict grievous bodily harm to any person in the building • Do unlawful damage to the building or anything in it. <p>2. Section 9(1)(b) the defendant having entered any building or part of a building as a trespasser:</p> <ul style="list-style-type: none"> • Steals or attempts to steal anything in the building, or • Inflicts or attempts to inflict grievous bodily harm on any person in the building. <p>ENTRY</p> <p>Explain Edmund Davies LJ definition of entry in <i>Collins</i> – trespass must involve ‘substantial and effective’ entry into the building.</p> <p>Explain the developments of the meaning of entry in <i>Brown and Ryan</i>.</p> <p>Explain that where a person has permission to enter that they are not considered a trespasser.</p> <p>Explain Edmund Davies LJ definition of trespass in <i>Collins</i> – an entry into a building or part of a building knowing that the other will not consent to the entry or</p>	16	<table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>AO1 Level</th> <th>AO1 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>14-16</td> </tr> <tr> <td>4</td> <td>11-13</td> </tr> <tr> <td>3</td> <td>8-10</td> </tr> <tr> <td>2</td> <td>5-7</td> </tr> <tr> <td>1</td> <td>1-4</td> </tr> </tbody> </table> <p>Level 5 Responses are unlikely to achieve level 5 without wide ranging, accurate detailed knowledge with a clear and confident understanding of relevant concepts and principles of the law in this area. This would include wide ranging, developed explanations and wide ranging, developed definitions of this area of law to include statutory/common law provisions where relevant. Responses are unlikely to achieve level 5 without including 8 relevant cases of which 6 are developed. Responses are likely to use material both from within the pre-release materials and from beyond the pre-release materials which have a specific link to the area of law.</p> <p>Level 4 Responses are unlikely to achieve level 4 without good, well-developed knowledge with a clear understanding of the relevant concepts and principles of the law in this area. This would include good explanations and good definitions of this area of law to include statutory/common law provisions where relevant. Responses are unlikely to achieve level 4 without including 6 relevant cases, 4 of which will be developed.</p> <p>Level 3 Responses are unlikely to achieve level 3 without adequate knowledge showing reasonable understanding of the relevant concepts and principles of the law in this area. This would include adequate explanations and adequate definitions of this area of law to include statutory/common law provisions where relevant. Responses are unlikely to achieve level 3 without</p>	AO1 Level	AO1 marks	5	14-16	4	11-13	3	8-10	2	5-7	1	1-4
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	<p>subjectively reckless as to whether the person consents to the entry or not <i>Cunningham</i>. Explain that where a defendant goes beyond the permission given, he could be considered to be a trespasser <i>Smith and Jones</i>.</p> <p>BUILDING Explain that Section 9 Theft Act 1968 provides no definition of building. Explain the meaning of building established by the courts in <i>Stevens v Gourley</i>, <i>B & S v Leathley</i>, <i>Norfolk Constabulary v Seekings and Gould</i>. Explain the meaning of 'part of a building' <i>Walkington</i>. Explain the reference to building added in section 9(4) Theft Act 1968 – which includes an inhabited vehicle or vessel, even when there is no one present.</p> <p>Credit any other relevant point.</p>		<p>including 4 relevant cases, 2 of which will be developed.</p> <p>Level 2 Responses are unlikely to achieve level 2 without limited knowledge showing general understanding of the relevant concepts and principles of the law in this area. This would include limited explanations and limited definitions of this area of law. Responses are unlikely to achieve level 2 without two relevant cases, neither of which are required to be developed.</p> <p>Level 1 Responses are unlikely to achieve level 1 without very limited knowledge of the basic concepts and principles of the law in this area. This would include very limited explanations and very limited definitions of this area of law. Responses are not required to discuss any cases.</p>

Question	Answer	Marks	Guidance												
	<p>Assessment Objective 2 (Analysis, evaluation and application)</p> <p>Discuss the rationalisation of section 9 of the Theft Act 1968 to consolidate the previous criminal law's complicated, haphazard system of offences.</p> <p>Discuss the potential complication between the two ways burglary can be committed.</p> <p>Discuss the fact that there is no definition in the Theft Act 1968 for entry and so the only definitions are to be found in case law.</p> <p>Discuss the way in which the courts have developed the definition of entry – '<i>substantial and effective</i>' in <i>Collins</i>, '<i>effective</i>' only in <i>Brown</i>, but even '<i>effective</i>' removed in <i>Ryan</i>.</p> <p>Discuss the difficulties associated with the point at which permission to enter is given in relation to the entry <i>Collins</i>.</p> <p>Discuss the difficulties of inserting the civil concept of the word '<i>trespass</i>' into the criminal law.</p> <p>Discuss the difficulties associated with entering in excess of permission or exceeding permission (the concept of trespass <i>ab initio</i> in the civil law) and the way that the court resolved this <i>Collins, Smith and Jones</i>.</p> <p>Discuss the difficulties the courts have encountered in defining '<i>building</i>' for burglary and how they have potentially overcome them:</p> <ul style="list-style-type: none"> • '<i>intended to be permanent or at least to endure for a considerable time</i>' <i>Stevens v Gourley</i>. • A caravan used for storage but connected to an electricity supply was a building <i>B & S v Leathley</i>. • However, a trailer used for storage was not a building because it still had wheels attached: 	14	<table border="1" style="margin-bottom: 10px;"> <thead> <tr> <th>AO2 Level</th> <th>AO2 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>13-14</td> </tr> <tr> <td>4</td> <td>10-12</td> </tr> <tr> <td>3</td> <td>7-9</td> </tr> <tr> <td>2</td> <td>4-6</td> </tr> <tr> <td>1</td> <td>1-3</td> </tr> </tbody> </table> <p>Level 5 Responses are unlikely to achieve Level 5 without sophisticated analytical evaluation of the relevant areas of law, being very focused on the quote and providing a logical conclusion with some synoptic content.</p> <p>Level 4 Responses are unlikely to achieve Level 4 without good analytical evaluation of the relevant areas of law and good focus on the quote.</p> <p>Level 3 Responses are unlikely to achieve Level 3 without adequate analytical evaluation of the relevant areas of law and some focus on the quote.</p> <p>Level 2 Responses are unlikely to achieve Level 2 without at least some limited analytical evaluation of the relevant areas of law. Responses are unlikely to discuss the quote.</p> <p>Level 1 Responses are unlikely to achieve Level 1 without at least some very limited analytical evaluation of the relevant areas of law. Responses are unlikely to discuss the quote.</p>	AO2 Level	AO2 marks	5	13-14	4	10-12	3	7-9	2	4-6	1	1-3
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		<p><i>Norfolk Constabulary v Seekings and Gould.</i> Discuss how the courts have defined '<i>part of a building</i>' – sectioned-off till area was part of a building <i>Walkington.</i> Discuss any other relevant analytical comment. Reach any sensible conclusion.</p>													
		<p>Assessment Objective 3 (Communication and presentation)</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	4	<table border="1"> <thead> <tr> <th>AO1 + AO2 marks</th> <th>AO3 marks</th> </tr> </thead> <tbody> <tr> <td>24-30</td> <td>4</td> </tr> <tr> <td>17-23</td> <td>3</td> </tr> <tr> <td>9-16</td> <td>2</td> </tr> <tr> <td>1-8</td> <td>1</td> </tr> </tbody> </table>		AO1 + AO2 marks	AO3 marks	24-30	4	17-23	3	9-16	2	1-8	1
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3		<p>Potential answers MAY:</p> <p>Assessment Objective 1 – Knowledge and understanding Explain robbery under section 8 - D immediately before or at the time of stealing uses force in order to steal or puts the other person in fear of force being used Explain the <i>actus reus</i> of robbery:</p> <ul style="list-style-type: none"> • Theft together with the use or fear of the use of force • If theft and force are completely separate this is not robbery <i>Robinson</i> • The act of appropriation can be continuous <i>Hale</i> • Extreme force or the threat of force is not needed as only a minimal amount is required <i>Dawson</i> <p>Explain the <i>mens rea</i> of robbery – that of theft (intent and dishonesty) and an intent or subjective recklessness in the threat or use of force.</p> <p>Explain burglary under section 9(1)(a) - enters as a trespasser with intent to commit theft, GBH or criminal damage; section 9(1)(b) - having entered as a trespasser goes on to commit or attempt theft or GBH;</p> <p>Explain the <i>actus reus</i> of burglary:</p> <ul style="list-style-type: none"> • Entry <i>Collins</i> • Building or part of a building <i>Walkington</i> • Trespasser <i>Smith and Jones</i> <p>Explain the difference between section 9(1)(a) and section 9(1)(b).</p> <p>Explain the mens rea for burglary – to know or be subjectively reckless as to trespass and intent to commit an ulterior offence for section 9(1)(b) and the <i>mens rea</i> for theft or GBH when carrying out the <i>actus reus</i> under section 9(1)(b).</p> <p>Assessment Objective 2 (Analysis, evaluation and application)</p> <p>In the case of (a):</p> <p>C Identify that robbery is theft combined with the use of force ‘on any person’ or ‘puts or seeks to put any person in fear’ and</p>	10 20	<table border="1"> <thead> <tr> <th>Level</th> <th>AO1</th> <th>AO2</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9-10</td> <td>17-20</td> </tr> <tr> <td>4</td> <td>7-8</td> <td>13-16</td> </tr> <tr> <td>3</td> <td>5-6</td> <td>9-12</td> </tr> <tr> <td>2</td> <td>3-4</td> <td>5-8</td> </tr> <tr> <td>1</td> <td>1-2</td> <td>1-4</td> </tr> </tbody> </table> <p>Marks should be awarded (per part question) as follows:</p> <table border="1"> <thead> <tr> <th>Level</th> <th>(a), (b) or (c)</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9-10</td> </tr> <tr> <td>4</td> <td>7-8</td> </tr> <tr> <td>3</td> <td>5-6</td> </tr> <tr> <td>2</td> <td>3-4</td> </tr> <tr> <td>1</td> <td>1-2</td> </tr> </tbody> </table> <p>NB A maximum of 3 marks can be allocated for AO1 for each part question.</p> <ul style="list-style-type: none"> • Max 3 marks for the critical point (CP) • Max 6 marks for applied points (AP) • Max 1 mark for a logical conclusion/assessment of the most likely outcome in terms of liability (CON) <p>In order to reach level 5, responses must include a discussion of the Critical Point, a relevant case and a logical conclusion.</p> <p>Responses are unlikely to achieve level 5 if the conclusion* is incorrect and contradicted by the reason offered.</p>	Level	AO1	AO2	5	9-10	17-20	4	7-8	13-16	3	5-6	9-12	2	3-4	5-8	1	1-2	1-4	Level	(a), (b) or (c)	5	9-10	4	7-8	3	5-6	2	3-4	1	1-2
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Question	Answer	Marks	Guidance
	<p>'in order to' carry out the theft. However, it is arguable that the threat of force was/was not used '<u>in order to</u>' steal as Gertrude wanted to lend the bicycle then later threw it in a nearby skip. <i>Zerei</i> (2012).</p> <p>1 Identify that there <u>must</u> be a completed theft (steals). If any element is missing then there is no theft. In Gertrude's case all the elements of theft appear to be satisfied except the intent to permanently deprive or all elements of theft are satisfied despite the bicycle being left in a nearby skip.</p> <p>2 Identify that the threat of force was '<i>immediately before or at the time</i>' of the potential theft of the bicycle. The act of appropriating the bicycle by Gertrude was done by using the threat of force at the time. <i>Hale</i>.</p> <p>3 Identify that there must be a use of force or the defendant seeks to put any person in fear of being subject to force. Gertrude threatened to beat Henri up unless he gives her the bicycle. <i>Clouden</i></p> <p>4 Identify that the <i>mens rea</i> of robbery is the intent to use or threaten force. Intent is defined as the desire to bring about the consequences/aim. The <i>mens rea</i> is satisfied when Gertrude says 'if you don't lend me your bicycle I'll beat you up'.</p> <p>CON Reach a sensible conclusion regarding robbery.</p> <p>In the case of (b):</p> <p>C Identify that to commit burglary the entry must be to a '<u>building</u>' or '<u>part of a building</u>' and that s.9(4) includes as a '<u>building</u>' an inhabited vessel. Since the owner, Jaio, is present on the boat then it is possible the boat could be inhabited and covered by s.9(4); or it may not be <u>inhabited</u>. <i>Stevens v Gourley/Norfolk Constabulary</i></p> <p>1 Identify that in order to commit burglary the defendant must have <u>entered</u> a '<u>building</u>' or '<u>part of a building</u>'. Entry has been defined so that it does not have to be '<i>substantial</i>' nor '<i>effective</i>' or this is a decision for the jury. It looks likely that Ewan entered by putting his arm through the window.</p>		* Conclusion – response has to provide a conclusion to answer and response must show more than 50% commitment (conclusion does not need to appear at end).

Question	Answer	Marks	Guidance
	<p>2 Identify that in order to commit burglary the defendant must be a trespasser. Ewan is a trespasser because he has no permission to be on the boat nor permission to put his hand through the boat's window. <i>Collins</i>.</p> <p>3 Identify that in order to commit burglary there must be an intent to trespass. In this case by putting his arm through the window Ewan clearly must know he is trespassing. <i>Brown/Ryan</i></p> <p>4 Identify that Ewan is potentially liable under s.9(1)(a) rather than s.9(1)(b). Ewan must have an intent to commit one of the ulterior offences under s9(2). In this case there is a clear intent to steal the watch when Ewan puts his arm through the window.</p> <p>CON Reach a sensible conclusion regarding burglary.</p> <p>In the case of (c):</p> <p>C Identify force must be used or threatened '<i>immediately before or at the time</i>' of the theft. This looks unlikely as the threat was made after the appropriation or the act of appropriation in robbery can be a continuing one therefore the threat of the use of force by Kelvin is connected to the theft, this could be considered robbery. <i>Hale</i>.</p> <p>1 Identify that there <u>must</u> be a completed theft (<i>steals</i>). If any element is missing then there is no theft. In taking the purse all the elements of theft appear to be satisfied including the intent to permanently deprive.</p> <p>2 Identify that robbery is theft combined with the use of force '<i>on any person or puts or seeks to put any person in fear</i>' and '<i>in order to</i>' carry out the theft. As the threat of force used by Kelvin to Miranda is connected to the theft then this could be considered a threat of force on a person. <i>Clouden</i>.</p> <p>3 Identify the use of force must <u>put or seek</u> to put the victim in fear of being '<i>then and there subjected to force</i>' in order to steal. Kelvin sought to put Miranda in fear when he shouts at her threatening to punch her. <i>Bentham/Lockley</i></p>		

Question	Answer	Marks	Guidance
	<p>4 Identify the <i>mens rea</i> for robbery is likely to be satisfied. Intent is defined as the desire to bring about the consequences/aim. In this case Kelvin intended to use threat of force in order to steal or Kelvin had already completed the theft and the force came later.</p> <p>CON Reach a sensible conclusion regarding robbery.</p>		

APPENDIX 1

There are five levels of assessment of AOs 1 and 2 in the A2 units. The first four levels are very similar to the four levels for AS units. The addition of a fifth level reflects the expectation of higher achievement by candidates at the end of a two-year course of study. There are four levels of assessment of AO3 in the A2 units. The requirements and number of levels differ between AS and A2 units to reflect the expectation of higher achievement by candidates at the end of a two-year course of study.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of relevant concepts and principles. Where appropriate candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

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