

**GCE**

**Law**

Unit **G154**: Criminal Law Special Study

Advanced GCE

**Mark Scheme for June 2015**

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

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

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

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Question	Answer	Marks	Guidance												
1*	<p>Potential answers <b>MAY</b>:</p> <p><b>Assessment Objective 2</b> (Analysis, evaluation and application)</p> <p><b>C</b> Discuss that Lord Elwyn-Jones stated that the ‘defence’ was only available to crimes of specific intent where drunkenness could provide a defence. Where the defendant carries out the <i>actus reus</i> for a crime where recklessness is part of the <i>mens rea</i> then his intoxication supplies the <i>mens rea</i> for a basic intent crime. The reckless course of action in getting intoxicated is enough therefore to constitute the necessary <i>mens rea</i> for basic intent crimes particularly assaults even although this may be several hours before the <i>actus reus</i>.</p> <p><b>1</b> Discuss that Lord Elwyn-Jones argued that self-induced drunkenness had in society been a long standing problem. He said that ‘voluntary drug-taking with the potential and actual dangers to others it may cause has added a new dimension to the old problem’. He was keen to protect the public and that any person who became voluntarily intoxicated and ‘<i>cast off the restraints of reason and conscience</i>’ should be held responsible for any harm done in that condition.</p> <p><b>2</b> Identify that the major issue in the case was that the defendant had been charged with three counts of actual bodily harm and three counts of assault on a police officer following a marathon drink and drugs session. He argued that he had ‘blacked out’ and had no recollection whatsoever of committing the offences. The trial judge had told the jury they could ignore the effect of the drink and drugs as being in any way a defence to the assaults and to convict him if they felt he would have the necessary <i>mens rea</i> if completely sober. The defendant appealed <i>inter alia</i> on this specific point.</p>	12	<table border="1" data-bbox="1473 284 1892 579"> <thead> <tr> <th data-bbox="1473 284 1675 323">AO2 Level</th> <th data-bbox="1675 284 1892 323">AO2 marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1473 323 1675 379">5</td> <td data-bbox="1675 323 1892 379">11-12</td> </tr> <tr> <td data-bbox="1473 379 1675 435">4</td> <td data-bbox="1675 379 1892 435">9-10</td> </tr> <tr> <td data-bbox="1473 435 1675 491">3</td> <td data-bbox="1675 435 1892 491">7-8</td> </tr> <tr> <td data-bbox="1473 491 1675 547">2</td> <td data-bbox="1675 491 1892 547">4-6</td> </tr> <tr> <td data-bbox="1473 547 1675 579">1</td> <td data-bbox="1675 547 1892 579">1-3</td> </tr> </tbody> </table> <p><b>CP</b> – Max 3 marks and linked to the material point/ratio. Where given, the ratio of the case needs to be given an AO2 slant to get a mark.</p> <p><b>1,2,3,4,5,SC</b> – Max 6 marks for Applied Point(s). These may be six single points, three points which are developed, two points which are well-developed or a combination of these up to a maximum of 6 marks. 1 mark is available for the facts of the case. An accurate source <b>and</b> line reference is adequate for the facts of the case to receive the one mark.</p> <p><b>SC</b> - Please note credit can only be given for comment that has direct relevance to <i>Majewski</i>. Hence any generic comment should not be credited.</p>	AO2 Level	AO2 marks	5	11-12	4	9-10	3	7-8	2	4-6	1	1-3
AO2 Level	AO2 marks														
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Question	Answer	Marks	Guidance
	<p><b>3</b> Discuss that the defendant was convicted at trial. Both the Court of Appeal and the House of Lords upheld his conviction. Lord Salmon felt that it was illogical to allow the 'defence' in one class of case and not in another. But he felt that treating specific intent crimes differently was justified. He did not agree that crimes of basic intent should be allowed the 'defence'.</p> <p><b>4</b> Recognise that the House of Lords specifically approved the Lipman rule on automatism and intoxication. Where automatism is due to the defendant's self-induced consumption of alcohol or drugs then the rules of intoxication apply. Therefore a defendant relying on automatism to avoid a conviction will be unlikely to succeed as his argument that he was unable to appreciate the consequence of his actions due to an external factor of alcohol or drugs will be rejected.</p> <p><b>5</b> Consider that Lord Elwyn-Jones rejected the defendant's argument that denying intoxication as a defence to basic intent crimes contradicted s.8 Criminal Justice Act 1967. The statutory guidance here requires juries to consider 'all the evidence' before deciding whether the defendant intended or foresaw the result of his action. He stated that this meant 'all the relevant evidence' and since the substantive law states 'that in crimes of basic intent, the factor of intoxication is irrelevant, evidence with regard to it is irrelevant'.</p> <p><b>SC</b> Consider any other relevant point eg the Law Commission Report in 2009 supported retaining the distinction between specific and basic intent crimes; the argument that intoxication is more likely to produce amnesia after the crime rather than being unable to form an intent during the crime ('<i>You pigs, I'll kill you all.</i>' in <i>Majewski</i> itself);</p> <p><b>LNK</b> Link to any other relevant case eg <i>Beard, Fotheringham, Lipman, Bratty, Heard, Richardson and Irwin etc</i></p>		<p><b>LNK – Max 3 marks</b> for a relevant, linked case. Credit can only be given for the link case where there is a specific link to <i>Majewski</i>.</p> <p><b>Level 5</b> Responses are unlikely to achieve Level 5 without discussing the CP, without using a linked case for the purpose of showing development, without making two analytical points and discussing the importance of the case.</p>

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			<p><b>Assessment Objective 3</b> (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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2*	<p>Potential answers <b>MAY</b>:</p> <p><b>Assessment Objective 1</b> (Demonstrate knowledge and understanding)</p> <p>Explain that the 'defence' is common law based and distinguishes between voluntary and involuntary intoxication</p> <p>Explain that in voluntary intoxication there is a difference between crimes of specific and basic intent</p> <p>Explain that voluntary intoxication can negate the <i>mens rea</i> needed for a specific intent offence – <i>Beard, Sheehan and Moore, Lipman</i> etc</p> <p>Explain that with voluntary intoxication the defendant will still be liable if <i>mens rea</i> was formed – a drunken intent is nevertheless intent <i>Sheehan</i></p> <p>Explain that voluntary intoxication, with certain exceptions, eg theft, is, at best, only a partial defence</p> <p>Explain that voluntary intoxication has no relevance to a specific intent offence if intoxication is due to 'Dutch courage' – <i>Gallagher</i></p> <p>Explain that voluntary intoxication is unlikely to provide a defence to crimes of basic intent – <i>Majewski</i></p>	16	<table border="1" data-bbox="1234 288 1789 619"> <thead> <tr> <th data-bbox="1234 288 1503 371">AO1 Level</th> <th data-bbox="1503 288 1789 371">AO1 marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1234 371 1503 421">5</td> <td data-bbox="1503 371 1789 421">14-16</td> </tr> <tr> <td data-bbox="1234 421 1503 470">4</td> <td data-bbox="1503 421 1789 470">11-13</td> </tr> <tr> <td data-bbox="1234 470 1503 520">3</td> <td data-bbox="1503 470 1789 520">8-10</td> </tr> <tr> <td data-bbox="1234 520 1503 569">2</td> <td data-bbox="1503 520 1789 569">5-7</td> </tr> <tr> <td data-bbox="1234 569 1503 619">1</td> <td data-bbox="1503 569 1789 619">1-4</td> </tr> </tbody> </table> <p><b>Level 5</b> 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><b>Level 4</b> 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</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>Explain involuntary intoxication if pleaded successfully provides a complete defence</p> <p>Explain involuntary intoxication provides a defence when prescribed medication is taken as directed and has an unpredictable effect – <i>Hardie</i></p> <p>Explain involuntary intoxication provides a defence where the defendant does not know they are taking an intoxicating substance, as in laced drinks</p> <p>Explain involuntary intoxication is unlikely to be a defence if the defendant has some awareness of intoxication – <i>Allen, Kingston</i></p> <p>Explain the link between intoxication and mistake that if a mistake is induced by intoxication (especially where self-defence is raised) there is rarely a defence, whether the crime is one of specific or basic intent – <i>Lipman, O’Grady, Hatton, Fotheringham, Section 76 Criminal Justice and Immigration Act 2008</i></p> <p>Explain the exception to intoxicated mistakes provided by Section 5 Criminal Damage Act 1971 <i>Jaggard v Dickinson</i></p> <p>Credit any other relevant point of knowledge and understanding</p>		<p>achieve level 4 without including 6 relevant cases, 4 of which will be developed.</p> <p><b>Level 3</b> 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 including 4 relevant cases, 2 of which will be developed.</p> <p><b>Level 2</b> 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><b>Level 1</b> 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> <p>A developed case can be explained as:</p> <p>Case name + facts and/or ratio.</p>

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	<p><b>Assessment Objective 2</b> (Analysis, evaluation and application)</p> <p>Consider the public policy issue as intoxication is at the root of a large amount of criminal conduct</p> <p>Consider the need to balance personal responsibility and society's role to protect those who are vulnerable and can be victims of crime</p> <p>Consider that the distinction between 'basic' and 'specific' intent offences are unclear</p> <p>Consider the effect of pleading intoxication is unclear: in <i>Majewski</i> it suggests the defendant is guilty due to intoxication if reckless; <i>Richardson and Irwin</i> asks whether the defendant would have formed the <i>mens rea</i> if sober</p> <p>Consider the argument that often there is no <i>mens rea</i> for the offence at the time it is committed as intoxication has already taken place and relatively few people set out to commit crimes when becoming intoxicated, or even see a risk that they will do so and decide to run it, so should intoxication always be a defence since the defendant has no <i>mens rea</i>? The lack of coincidence of the <i>actus reus</i> and the <i>mens rea</i></p> <p>Consider the problems of fall back offences and the situation in relation to theft and the arbitrary nature of distinctions between specific and basic intent</p>	14	<table border="1" data-bbox="1234 264 1742 624"> <thead> <tr> <th data-bbox="1234 264 1480 357">AO2 Level</th> <th data-bbox="1480 264 1742 357">AO2 marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1234 357 1480 411">5</td> <td data-bbox="1480 357 1742 411">13-14</td> </tr> <tr> <td data-bbox="1234 411 1480 466">4</td> <td data-bbox="1480 411 1742 466">10-12</td> </tr> <tr> <td data-bbox="1234 466 1480 520">3</td> <td data-bbox="1480 466 1742 520">7-9</td> </tr> <tr> <td data-bbox="1234 520 1480 574">2</td> <td data-bbox="1480 520 1742 574">4-6</td> </tr> <tr> <td data-bbox="1234 574 1480 624">1</td> <td data-bbox="1480 574 1742 624">1-3</td> </tr> </tbody> </table> <p><b>Level 5</b> 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><b>Level 4</b> 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><b>Level 3</b> 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><b>Level 2</b> 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>	AO2 Level	AO2 marks	5	13-14	4	10-12	3	7-9	2	4-6	1	1-3
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	<p>Consider whether a defendant should be liable when they exercised no choice about becoming intoxicated? Eg strict liability offences</p> <p>Consider the potential breach of s.8 Criminal Justice Act 1968</p> <p>Consider that courts in many other commonwealth countries such as Australia and New Zealand do not separate crimes into 'basic' and 'specific', but others, like Canada, have done.</p> <p>Consider the Butler Committee 1975 proposed an offence of 'dangerous intoxication' – and its rejection</p> <p>Consider that the Law Commission 1993 proposed a defence of voluntary intoxication to all crimes and in 1995 recommended codifying existing law; this was repeated in Offences Against the Person Bill 1998 but not enacted</p> <p>Evaluate the Law Commission's 2009 Report on <i>Intoxication and Criminal Liability</i></p> <p>Consider any other relevant point of analysis, evaluation and application</p> <p>Reach any sensible conclusion.</p>		<p><b>Level 1</b></p> <p>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>

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			<p><b>Assessment Objective 3</b> (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 <b>MAY</b>:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Define the relevant rules and use any relevant cases as authorities for those rules.</p> <p><b>Assessment Objective 2</b> (Analysis, evaluation and application)</p> <p><b>In the case of (a):</b></p> <p><b>C</b> Identify that involuntary intoxication is where Mick wouldn't have known he is taking intoxicating substances <i>Allen</i>. Here it looks likely that Mick is completely unaware that what he is actually drinking has been 'laced' or 'spiked' with alcohol thus suggesting that he is possible that he can be considered involuntarily intoxicated.</p> <p><b>1</b> Discuss that the law asks: did Mick have the necessary <i>mens rea</i> when he committed the offence? If yes, he is guilty as the involuntary intoxication will not provide a defence <i>Kingston</i>. It looks highly unlikely that Mick knew what he was doing at the time he took the expensive watch since he cannot remember doing so having mistaken what he was drinking as a 'soft' drink.</p> <p><b>2</b> Discuss if Mick did not have the necessary intent nor was he reckless then he will not be guilty <i>Hardie</i>. When Mick took the watch it would be difficult to prove intent at the specific time of appropriation since he cannot remember taking the watch, nor does it look likely he was reckless since he was drinking what Nazreen had</p>	<p>10</p> <p>20</p>	<table border="1" data-bbox="1328 292 2038 531"> <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><b>Marks should be awarded (per scenario) as follows:</b></p> <table border="1" data-bbox="1328 679 2011 991"> <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><b>A maximum of 3 marks can be allocated for AO1 for each part question.</b></p> <ul data-bbox="1373 1201 2000 1398" style="list-style-type: none"> <li>• Max 3 marks for the Critical Point (CP)</li> <li>• Max 6 marks for Applied Points (AP)</li> <li>• Max 1 mark for a logical conclusion/assessment of the most likely outcome in terms of liability (CON)</li> </ul>	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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	<p>described as a 'non-alcoholic fruit drink'.</p> <p>3 Discuss whether Mick was reckless <i>Hardie/Bailey</i>. Since he had been drinking all afternoon there is a possibility that he was or should have been aware that he was drinking an intoxicant and was therefore reckless. <b>CON</b> Reach a sensible conclusion regarding intoxication.</p> <p><b>In the case of (b)</b></p> <p><b>C</b> Discuss that if Jin is, despite his intoxicated state, still able to form the necessary <i>mens rea</i> for the crime, then he will be guilty of the offence; intoxication does not provide a defence, <i>Attorney General for Northern Ireland v Gallagher</i>. Here Jin was originally nervous but it seems that he may have drunk the lagers to become less nervous and gain the 'Dutch courage', to confront Duncan.</p> <p><b>1</b> Identify that voluntary intoxication is where Jin has deliberately chosen to take an intoxicating substance. This is achieved by Jin taking alcohol, illegal drugs or by taking a prescribed drug which its effect will make him intoxicated. Here Jin has intentionally drunk 'several strong lagers' and will be deemed voluntarily intoxicated through alcohol.</p> <p><b>2</b> Discuss that voluntary intoxication can negate Jin's <i>mens rea</i> for a specific intent offence <i>Beard</i>. If Jin was so intoxicated when he knocked Duncan out then it would be difficult to prove he had the <i>mens rea</i> for a specific intent crime and therefore unable to prove such an offence eg s.18 GBH.</p> <p><b>3</b> Discuss that where the offence is one of basic intent and there is a 'fall-back' offence, intoxication does not provide a defence for Jin <i>Majewski</i>. As Jin drank several</p>		<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 candidate's response. The conclusion must show commitment to their reasoning.</p>

Question	Answer	Marks	Guidance
	<p>strong lagers and undoubtedly became intoxicated, this is a reckless course of conduct and therefore enough to constitute the necessary mens rea for a basic intent crime eg s.20 GBH, or s.47 ABH.</p> <p><b>4</b> Consider for basic intent crimes that the prosecution must prove that Jin would have seen the risk of injury had he not been intoxicated, <i>Richardson and Irwin</i>. It is likely that while sober Jin would have considered that by hitting Duncan over the head with the chair Jin himself would have seen the risk of injury.</p> <p><b>CON</b> Reach a sensible conclusion regarding intoxication.</p> <p><b>In the case of (c):</b></p> <p><b>C</b> Discuss that if Aimee was completely unaware that her actions would bring about a self-induced automatic state and commit an offence, she can use the defence since her actions would not be regarded as reckless. <i>Hardie</i>. As Aimee may have thought, genuinely, that the pill would simply alleviate her headache she could raise the defence completely acting as an automaton and argue a full defence due to the external factor.</p> <p><b>1</b> Identify self-induced intoxication as being a species of self-induced automatism where Aimee must be completely unaware that her actions of taking an intoxicant is likely to bring on an automatic state <i>Hardie</i>. Here Aimee has taken a pill that she believes is one that will help her with her headache.</p> <p><b>2</b> Discuss that having taken the pill and, if Aimee knew it could cause unsettling behaviour, and, if she committed a crime of specific intent, self-induced intoxication/automatism will provide a defence to specific intent crimes <i>Bailey</i>. Here it is difficult to say whether Aimee knew the potential change in behaviour taking the</p>		

Question	Answer	Marks	Guidance
	<p>pill could cause, if she did, then a complete defence to specific intent crimes could be possible.</p> <p><b>3</b> Discuss that taking a pill potentially knowing that it could change her behaviour, Aimee would not be assisted in a defence against offences of basic intent since becoming voluntarily intoxicated is a reckless course of action, <i>Majewski</i>. It is arguable that taking her mother's prescribed medicine is a risky course of action and therefore Aimee must have seen the risk and be deemed reckless in taking the pill.</p> <p><b>CON</b> Reach a sensible conclusion regarding intoxication.</p>		

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