



A Level Law

H415/01 The legal system and criminal law

Practice Paper

MARK SCHEME

Duration: 2 hours

MAXIMUM MARK 100

This document consists of 35 pages

MARKING INSTRUCTIONS**PREPARATION FOR MARKING
SCORIS**

1. Make sure that you have accessed and completed the relevant training packages for on-screen marking: *scoris assessor Online Training*; *OCR Essential Guide to Marking*.
2. Make sure that you have read and understood the mark scheme and the question paper for this unit. These are posted on the RM Cambridge Assessment Support Portal <http://www.rm.com/support/ca>
3. Log-in to scoris and mark the **required number** of practice responses (“scripts”) and the **number of required** standardisation responses.

YOU MUST MARK 10 PRACTICE AND 10 STANDARDISATION RESPONSES BEFORE YOU CAN BE APPROVED TO MARK LIVE SCRIPTS.

MARKING

1. Mark strictly to the mark scheme.
2. Marks awarded must relate directly to the marking criteria.
3. The schedule of dates is very important. It is essential that you meet the scoris 50% and 100% (traditional 40% Batch 1 and 100% Batch 2) deadlines. If you experience problems, you must contact your Team Leader (Supervisor) without delay.
4. If you are in any doubt about applying the mark scheme, consult your Team Leader by telephone or the scoris messaging system, or by email.
5. **Crossed Out Responses**
Where a candidate has crossed out a response and provided a clear alternative then the crossed out response is not marked. Where no alternative response has been provided, examiners may give candidates the benefit of the doubt and mark the crossed out response where legible.

Rubric Error Responses – Optional Questions

Where candidates have a choice of question across a whole paper or a whole section and have provided more answers than required, then all responses are marked and the highest mark allowable within the rubric is given. Enter a mark for each question answered into RM

assessor, which will select the highest mark from those awarded. *(The underlying assumption is that the candidate has penalised themselves by attempting more questions than necessary in the time allowed.)*

Multiple Choice Question Responses

When a multiple choice question has only a single, correct response and a candidate provides two responses (even if one of these responses is correct), then no mark should be awarded (as it is not possible to determine which was the first response selected by the candidate).

When a question requires candidates to select more than one option/multiple options, then local marking arrangements need to ensure consistency of approach.

Contradictory Responses

When a candidate provides contradictory responses, then no mark should be awarded, even if one of the answers is correct.

Short Answer Questions (requiring only a list by way of a response, usually worth only **one mark per response**)

Where candidates are required to provide a set number of short answer responses then only the set number of responses should be marked. The response space should be marked from left to right on each line and then line by line until the required number of responses have been considered. The remaining responses should not then be marked. Examiners will have to apply judgement as to whether a 'second response' on a line is a development of the 'first response', rather than a separate, discrete response. *(The underlying assumption is that the candidate is attempting to hedge their bets and therefore getting undue benefit rather than engaging with the question and giving the most relevant/correct responses.)*

Short Answer Questions (requiring a more developed response, worth **two or more marks**)

If the candidates are required to provide a description of, say, three items or factors and four items or factors are provided, then mark on a similar basis – that is downwards (as it is unlikely in this situation that a candidate will provide more than one response in each section of the response space.)

Longer Answer Questions (requiring a developed response)

Where candidates have provided two (or more) responses to a medium or high tariff question which only required a single (developed) response and not crossed out the first response, then only the first response should be marked. Examiners will need to apply professional judgement as to whether the second (or a subsequent) response is a 'new start' or simply a poorly expressed continuation of the first response.

6. Always check the pages (and additional objects if present) at the end of the response in case any answers have been continued there. If the candidate has continued an answer there then add a tick to confirm that the work has been seen.
7. Award No Response (NR) if:
- there is nothing written in the answer space.

Award Zero '0' if:

- anything is written in the answer space and is not worthy of credit (this includes text and symbols).

Team Leaders must confirm the correct use of the NR button with their markers before live marking commences and should check this when reviewing scripts.

8. The scoris **comments box** is used by your team leader to explain the marking of the practice responses. Please refer to these comments when checking your practice responses. **Do not use the comments box for any other reason.** If you have any questions or comments for your team leader, use the phone, the scoris messaging system, or e-mail.
9. Assistant Examiners will send a brief report on the performance of candidates to their Team Leader (Supervisor) via email by the end of the marking period. The report should contain notes on particular strengths displayed as well as common errors or weaknesses. Constructive criticism of the question paper/mark scheme is also appreciated.
10. For answers marked by levels of response: Not applicable in F501.
- To determine the level** – start at the highest level and work down until you reach the level that matches the answer
 - To determine the mark within the level**, consider the following:

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Just enough achievement on balance for this level	Above bottom and either below middle or at middle of level (depending on number of marks available)
Meets the criteria but with some slight inconsistency	Above middle and either below top of level or at middle of level (depending on number of marks available)
Consistently meets the criteria for this level	At top of level

SUBJECT-SPECIFIC MARKING INSTRUCTIONS**Introduction**

Your first task as an Examiner is to become thoroughly familiar with the material on which the examination depends. You should ensure that you have copies of these materials:

- the specification, especially the assessment objectives
- the question paper and its rubrics
- the mark scheme.

You should ensure also that you are familiar with the administrative procedures related to the marking process. These are set out in the OCR booklet **Instructions for Examiners**. If you are examining for the first time, please read carefully **Appendix 5 Introduction to Script Marking: Notes for New Examiners**. Please ask for help or guidance whenever you need it. Your first point of contact is your Team Leader.

Information and instructions for examiners

The co-ordination scripts provide you with examples of the standard of each band. The marks awarded for these scripts will have been agreed by the Team Leaders and will be discussed fully at the Examiners' Co-ordination Meeting.

The specific task-related indicative content for each question will help you to understand how the band descriptors may be applied. However, this indicative content **does not** constitute the mark scheme: it is material that candidates might use, grouped according to each assessment objective tested by the question. It is hoped that candidates will respond to questions in a variety of ways. Rigid demands for 'what must be a good answer' would lead to a distorted assessment. Candidates' answers must be relevant to the question. Beware of prepared answers that do not show the candidate's thought and which have not been adapted to the thrust of the question. Beware also of answers where candidates attempt to reproduce interpretations and concepts that they have been taught but have only partially understood.

Using the Mark Scheme

Please study this Mark Scheme carefully. The Mark Scheme is an integral part of the process that begins with the setting of the question paper and ends with the awarding of grades. Question papers and Mark Schemes are developed in association with each other so that issues of differentiation and positive achievement can be addressed from the very start.

This Mark Scheme is a working document; it is not exhaustive; it does not provide 'correct' answers. The Mark Scheme can only provide 'best guesses' about how the question will work out, and it is subject to revision after we have looked at a wide range of scripts.

The Examiners' Standardisation Meeting will ensure that the Mark Scheme covers the range of candidates' responses to the questions, and that all Examiners understand and apply the Mark Scheme in the same way. The Mark Scheme will be discussed and amended at the meeting, and

administrative procedures will be confirmed. Co-ordination scripts will be issued at the meeting to exemplify aspects of candidates' responses and achievements; the co-ordination scripts then become part of this Mark Scheme.

Before the Standardisation Meeting, you should read and mark in pencil a number of scripts, in order to gain an impression of the range of responses and achievement that may be expected.

Please read carefully all the scripts in your allocation and make every effort to look positively for achievement throughout the ability range. Always be prepared to use the full range of marks.

Assessment Objectives

Three Assessment Objectives are being assessed across the questions: **AO1**: Demonstrate knowledge and understanding of the English legal system and legal rules and principles, **AO2**: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology, **AO3**: Analyse and evaluate legal rules, principles and concepts.

For **AO2**, there are two elements to the assessment objective:

- Apply legal rules and principles to given scenarios
- Present a legal argument using appropriate legal terminology

These two elements should have equal weighting and be awarded jointly according to the guidance given in the level descriptors and indicative content. For example, to achieve level 4, an answer should include excellent application of legal rules and principles and excellent presentation of legal argument. Further guidance will be given in the standardisation meeting when there is an uneven performance across the elements.

Levels of Response

Questions in this paper are marked using a levels of response grid. When using this grid, examiners must use a best-fit approach. Where there are both strengths and weaknesses in a particular response, particularly imbalanced responses in terms of the assessment objectives, examiners must carefully consider which level is the best fit for the performance. Note that candidates can achieve different levels in each assessment objective, for example a Level 3 for AO1, and a Level 2 for AO2.

To use these grids:

Determine the level: start at the highest level and work down until you reach the level that matches the answer.

Determine the mark within the level: consider the following:

Descriptor	Award mark
On the borderline of this level and the one below	At the bottom level
Just enough achievement on balance for this level	Above bottom and either below middle or at middle of level (depending on number of marks available)
Meets the criteria but with some slight inconsistency	Above middle and either below top of level or at middle of level (depending on number of marks available)
Consistently meets the criteria for this level	At top of level

ASSESSMENT OBJECTIVES: BREAKDOWN BY QUESTION

Section A

Questions 1-2

Assessment Objective:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks
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Question 3-4

Assessment Objective:	AO3 1b: Analyse and evaluate legal issues. 15 marks
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Section B**Question 5,6,8 and 9**

Assessment Objective:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks AO2 1a/1b Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks
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Questions 7* and 10*

Assessment Objective:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks AO3 1a: Analyse and evaluate legal rules and principles. 15 marks
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Questions that have an asterisk (*) assess the quality of a candidate's extended response. Level descriptors are identified in the AO3 column in italics.

Answer	Marks	Guidance
1 Explain the training of barristers Answers may include the following: Academic stage: • Successful completion of a qualifying law degree; or • Degree in a different subject plus the Graduate Diploma in Law • Successful completion of the Bar Course Aptitude Test Vocational stage: • Bar Professional Training Course • Student must undertake core subjects and optional modules. Subjects covered include, for example: ○ criminal and civil advocacy ○ civil and criminal litigation ○ drafting documents ○ opinion writing ○ evidence ○ advocacy • Student must also join one of the four Inns of Court and complete: ○ 12 Qualifying Sessions or ○ residential training weekends • Upon successful completion of the Called to the Practical stage: • Apply for Pupillage through Pupillage Gateway • Pupillage – on the job training • Last 12 months divided into two six months: ○ First six months involves work shadowing	10 AO1	Use Levels of Response criteria Level 4 (9-10 marks) Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law. Level 3 (6-8 marks) Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law. Level 2 (3-5 marks) Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law. Level 1 (1-2 marks) Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited. Level 0 (0 marks) No response or no response worthy of credit.

Answer	Marks	Guidance
○ Second six months, work shadowing continues but pupil will be eligible to undertake their own cases under supervision Credit any other relevant point(s)		

Answer	Marks	Guidance
2 Describe how it is decided where the trial of a triable either way offence should be held Answers may include the following: • Trial will take place either in the Magistrates' Court or in the Crown Court • Plea before venue - where the defendant will be asked whether they plead guilty or not guilty to the offence • If the defendant pleads guilty the case is automatically heard in the Magistrates' Court and sentence will be passed. The magistrates retain the option of sending the defendant to the Crown Court for sentencing if necessary • Mode of trial following a not guilty plea. Magistrates will decide on the most appropriate court to try the case. • When deciding the magistrates will consider ○ whether they have the jurisdiction ○ whether they consider they have adequate sentencing powers • If they feel they lack jurisdiction or sentencing power they will transfer the matter to the Crown Court • If the magistrates accept summary jurisdiction the defendant is given the choice of which court he/she wishes to be tried in • Upon completion of the trial and a guilty verdict, the	10 AO1	Use Levels of Response criteria Level 4 (9-10 marks) Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law. Level 3 (6-8 marks) Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law. Level 2 (3-5 marks) Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law. Level 1 (1-2 marks) Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.

Answer	Marks	Guidance
magistrates retain the right to send the case to Crown Court for sentencing Credit any other relevant point(s)		Level 0 (0 marks) No response or no response worthy of credit.

Answer	Marks	Guidance
3 Discuss the benefits of using modern technology in legal services Answers may include the following: • A benefit of technology is that it allows for claims to be filed online. There is no longer the need for a claimant to visit a court and hand in their claim • Online Dispute Resolution services are a great benefit to clients as they can try and settle their dispute without leaving home saving both time and money • Technology in legal services is beneficial as it allows for court documents to be stored electronically reducing the need to store huge amounts of paperwork. It is also quick to access • Case decisions are now stored electronically allowing both client and lawyer to access procedures, reports and case law on-line. Cases can be found very quickly and are in one place • Technology allows clients to save both time and money. With a vast array of legal documents available electronically, there is no longer the need to visit a Law Firm each time a legal document is required, for example a Will	15 AO3 1b	Use Levels of Response criteria Level 4 (12-15 marks) Excellent analysis and evaluation of a wide range of legal concepts and issues. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed. Level 3 (8-11 marks) Good analysis and evaluation of a range of legal concepts and issues. The response has mainly consistent focus on the question. Most of the key points are well discussed and well developed. Level 2 (4-7 marks) Basic analysis and evaluation of legal concepts and issues. The response partially focused on the question. Some of the key points are discussed and partially developed. Level 1 (1-3 marks) Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal.

Answer	Marks	Guidance
• Technology will eventually change legal services beyond recognition including, soon, an online court • A benefit of technology to lawyers is that technology allow them to become international meaning they can deal with cases all over the world. Technology allows for globalisation. Law firms may have offices around the world • Technology allows lawyers to deal with a greater number of clients at one time. There is no longer the need for clients to visit the offices of law firms. Correspondence can easily be dealt with electronically • Technology makes it easier for Law Firms to store their client files. They are also accessible Credit any other relevant point(s)		Level 0 (0 marks) No response or no response worthy of credit.

Answer		Marks	Guidance
4	Discuss the advantages of using lay magistrates in criminal trials. Answers may include the following: • An advantage of using lay magistrates is that they sit in threes to make a decision. This means that they are less likely to be as prejudiced as a District Judge sitting alone in the Magistrates' Court • Lay magistrates must live or work in the local justice area, which means they should have awareness of local crime patterns and opinions. The result of this is that local justice is dispensed by local people • An advantage of using lay magistrates is that there is diversity on the bench. Diversity in terms of occupation, age, ethnicity and gender consequently giving a good cross section of society • Lay Magistrates are not paid a salary, only expenses. This is an advantage as it is cheap for the Government • Lay magistrates work part time and are not sitting in court every day seeing the same types of cases meaning they are not as case-hardened as District Judges who sit daily in the same court hearing similar cases • Lay magistrates undertake extensive supervised training meaning they are not as amateur as it has been said. Such training allows for consistent sentencing • Whilst lay magistrates are not lawyers each Magistrates' Court has a trained legal advisor available to help with legal matters. • There are relatively few appeals against the decision of lay magistrates. This suggests they do good job and are	15 AO3 1b	Use Levels of Response criteria Level 4 (12-15 marks) Excellent analysis and evaluation of a wide range of legal concepts and issues. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed. Level 3 (8-11 marks) Good analysis and evaluation of a range of legal concepts and issues. The response has mainly consistent focus on the question. Most of the key points are well discussed and well developed. Level 2 (4-7 marks) Basic analysis and evaluation of legal concepts and issues. The response partially focused on the question. Some of the key points are discussed and partially developed. Level 1 (1-3 marks) Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal. Level 0 (0 marks) No response or no response worthy of credit.

Answer		Marks	Guidance
	an advantage. Very few cases are appealed against conviction or on an error in law Credit any other relevant point(s)		

5. Advise whether Kevin is liable for any non-fatal offences against Cassandra and whether he will be successful, or not, in raising the defence of consent.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.
Additional Guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **MAY**:

Define and explain common law assault and battery – charged under section 39 Criminal Justice Act 1988:

- Assault: *actus reus* is putting a person in fear of immediate and unlawful personal harm accompanied by *mens rea* of intention or subjective recklessness - *Venna*
- Words may negate an assault – *Tuberville v Savage, Light*
- Battery: *actus reus* is the infliction of unlawful personal harm accompanied by a *mens rea* of intention or subjective recklessness – *Collins v Wilcock, Thomas, Venna*

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

- *Actus reus* is assault leading to physical or psychological harm which interferes with health or comfort of the victim – *Miller, Chan-Fook, Constanza, Ireland, Burstow*
- *Mens rea* of intention or subjective recklessness is only needed for the assault or battery – *Roberts, Savage, Constanza*

OR,

Define and explain unlawful and malicious inflicting grievous bodily harm – section 20 Offences Against the Person Act 1861:

- *Actus reus* includes infliction of really serious physical or psychological harm – *Smith, Ireland, Burstow*
- *Mens rea* is foresight of some harm but not necessarily serious harm – *Grimshaw, Parmenter*

Define and explain defence of consent in the context of a medical procedure:

- Can be given for physical benefit which include surgical interferences and therapeutic treatments
- Must be real - *Burrell and Harmer, Gillick*
- Fraud only negatives consent if it deceives as to identity of defendant or as to nature and quality of act – *Clarence, Richardson, Tabassum, Dica, Konzani*

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include the following:

In the case of Kevin massaging Cassandra's leg and foot:

- *Actus reus* of battery exists as Kevin touches Cassandra's leg and foot with his hands
- *Mens rea* of battery exists as Kevin appears to touch Cassandra intentionally

In the case of Kevin shouting at Cassandra:

- *Actus reus* of assault may exist as Kevin puts Cassandra in fear of further and immediate harm
- *Mens rea* of assault may exist since he is at least, subjectively reckless, if not intentional, in his action

In the case of Kevin causing Cassandra's depression (section 47 Offences Against the Person Act 1861):

- *Actus reus* may exist as Kevin has created a situation which appears to psychologically 'interfere with health or comfort' of Cassandra
- *Mens rea* may exist as his actions appear at least reckless as to the initial unlawful act of battery

OR,

In the case of Kevin causing Cassandra's depression (section 20 Offences Against the Person Act 1861):

- *Actus reus* may exist as the psychological injury could be serious – depression, agoraphobia
- *Mens rea* may exist as his actions appear reckless as to some harm albeit not necessarily serious harm

In the case of Cassandra allowing Kevin to carry out the massage:

- Consider argument that Kevin does not apply any unlawful force on the basis that Cassandra consented

- Consider Cassandra's consent may not be valid as there is nothing to suggest she would have consented had she known Kevin was unqualified and it could be argued that working at the clinic that Cassandra, not unreasonably, would believe he was qualified
- Consider consent is likely to have been revoked by Cassandra, having been shouted at, but that this is not communicated to Kevin due to the trauma

Reach a reasoned conclusion in each instance.

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law.	9-10	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	12-15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law.	6-8	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	8-11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to case law.	3-5	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.	4-7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	1-2	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

6. Advise whether Connor can avoid liability for any offences by using the defence of duress by threat **and** whether Hector can avoid liability by using the defence of self-defence if charged with the injury to Connor.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.
Additional Guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **MAY**:

Define and explain the defence of duress by threats:

- Threats causing pressure to commit a crime and that, if successful, the effect is acquittal
- Common law test
- Standard test governs the application of the defence - *Graham, Hasan*

Define and explain the defence of duress by threats and its limitations:

- Defence can't be raised against murder or attempted murder – *Howe, Lynch*
- Threat has to be of death, serious harm or rape - *Howe, Valderrama-Vega*
- The objective/subjective nature of the threat - *Graham, Bowen, Flatt*
- Threat to defendant, close family or of someone to whom a responsibility is owed *Ortiz, Wright*
- Nexus between threat and nomination of the offence – *Cole, Abdul-Hussein*
- Threat must be 'imminent' - *Hudson & Taylor, Abdul-Hussain* or 'almost immediate' *Hasan*
- Voluntary association with criminals *Sharp, Fitzpatrick, Hasan*

Define and explain self-defence:

- Use of some force must be necessary in the circumstances as they appear to the defendant

- Force used must be reasonable – *Palmer, Owino*,
- Evidence of an attempt to retreat is desirable, but not essential – *Bird*
- Use of excessive force may render the defence unavailable – *Clegg*
- Mistake as to the need for force in self-defence must be assessed subjectively – *Williams (Gladstone)*
- Successfully raising self-defence leads to acquittal as it is a complete defence
- Credit reference to the Criminal Justice and Immigration Act 2008

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include the following:

In the case of the defence of duress being raised by Connor - likely to be satisfied in part, but fail overall:

- The crime committed (burglary) is neither murder nor attempted murder, so this part is satisfied
- There is a threat of serious injury made by McKenzie
- That the threat is made, not to Connor himself, but to his grandmother
- Graham 1 - Whether Connor was compelled to act as he did because he himself thought his life, or someone he was responsible for, was in danger
- Graham 2 - Whether a sober person of reasonable firmness sharing Connor's characteristics would have responded in the same way following McKenzie's threats
- That there is no nexus between the crime nominated by Connor himself (burglary) and the threat by McKenzie
- That the threat was not 'imminent' nor 'almost immediate' as Connor was given a week to obtain the money from Hector
- That Connor voluntarily associated with a violent gang as would be unlikely to be allowed the defence

In the case of Hector hitting Connor with the baseball bat and causing a serious injury requiring hospitalisation:

- Hector finding Connor in his house seems likely to make him think he could be attacked, though Connor does try to immediately escape
- Hector could try and diffuse the situation, but this is not essential
- Hitting Connor with a baseball bat could be a disproportionate level of force given that Connor had not touched Hector and was trying to escape
- If Hector honestly believes he is about to be attacked that should suffice and negate any mistake

Reach a reasoned conclusion in each instance.

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law.	9-10	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	12-15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law.	6-8	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	8-11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to case law.	3-5	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.	4-7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	1-2	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

7* 'The offence of involuntary manslaughter fails to meet the requirements of a modern society and needs to be reformed urgently.'
Discuss the extent to which this statement is accurate.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO3 1a: Analyse and evaluate legal rules and principles. 15 marks.
Additional Guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Discuss the extent to which this statement is accurate.

Answers **MAY**:

Define involuntary manslaughter – unlawful killing of a human being without the high level of *mens rea* required for murder
Explain that involuntary manslaughter covers a wide range of situations and this is reflected in the sentencing

Define unlawful act/constructive manslaughter:

- Unlawful act – this must be a criminal, positive act – *Lamb, Goodfellow, Newbury and Jones*
- Dangerous act – this is measured by an objective test but can be against a person or property and there must be a risk of physical harm – *Church, Mitchell, Goodfellow, Dawson*
- Unlawful act must cause death – *Cato, Dalby, Rogers, Kennedy*
- *Mens rea* is required for the initial unlawful act but there is no need to realise that the act is dangerous or unlawful, or to foresee a risk of harm – *Newbury and Jones*

Define gross negligence manslaughter – *Adomako*:

- There must be a duty of care to the victim – *Khan and Khan, Wacker*
- There must be a breach of that duty
- The breach of duty must cause death
- The defendant's failure must be so 'gross' in the eyes of the jury as to be criminal and there must be a risk of death – *Stone and Dobinson, Adomako, Misra*

Define reckless manslaughter:

- Requirement of subjective recklessness – *Lidar*

Credit any other relevant point(s)

AO3 Indicative content

Answers **MAY**:

Discuss any or all of the following areas in the context of suitability in a modern society and the need for reform:

- Involuntary manslaughter is unwieldy as it covers too wide a range of situations in society
- In unlawful act manslaughter death may have been unexpected but if it occurs liability increases significantly, and the objective test creates liability even if the defendant did not foresee a risk of injury
- Law Commission recommended abolition in 1996 but then in *Murder, Manslaughter and Infanticide 2006* proposed new offence of criminal manslaughter – would this be more suitable in a modern society?
- Problem of circular test and inconsistent jury verdicts in gross negligence manslaughter
- Problems of gross negligence manslaughter using a test more at home in the civil law to define serious liability
- Law Commission 1996 proposal to have killing by gross carelessness but not enacted and then 2006 proposal to retain, with slight modification, present law on gross negligence manslaughter – would this be more suitable in a modern society?
- Law Commission 2006 proposal to abolish reckless manslaughter and to rely on second degree murder and gross negligence manslaughter – would this be more suitable in a modern society?
- Despite law reform proposals, does lack of action serve the criminal law well, does it adequately protect victims and punish defendants, will creation of second degree murder be helpful and if so how could it benefit a modern society?

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO3 1a	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law.	9-10	Excellent analysis and evaluation of a wide range of legal rules and principles. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion. There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.	12-15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law.	6-8	Good analysis and evaluation of a range of legal rules and principles. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion. There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.	8-11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to case law.	3-5	Basic analysis and evaluation of legal rules and principles. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion. The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.	4-7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	1-2	Limited analysis of legal rules and principles. The response has limited focus on the question. Discussion of any key points is minimal. The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

8. Advise whether Andrew is criminally liable for the murder of both Bradley and Mavis.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.
Additional Guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers MAY:

Define and explain the common law offence of murder:

Define the *actus reus* of murder:

- Causing death of a human being
- Under the King or Queen's Peace
- Within any country of the realm.

Define the *mens rea* of murder:

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

Define the principle of coincidence of *actus reus* and *mens rea* – the *transaction* theory:

- Principle that extends the rule that the *actus reus* and *mens rea* elements of a crime must occur at the same time
- One exception to the rule under 'coincidence' is the transaction theory where the *actus reus* is part of a larger sequence of

events, where it may be sufficient that a defendant forms the *mens rea* at some point during the sequence – *Thabo Meli, Le Brun*

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include the following:

In the case of Bradley's death by Andrew – ***actus reus***:

The *actus reus* appears likely to be proven

- The shot to Bradley's is the cause of Bradley's death both factually and legally
- Bradley is a human being and 'dies an hour later' which means brain stem death
- Even though Bradley is a soldier, he is home on leave so is not acting in a military capacity and is therefore under the Queen's Peace
- Bradley is at 'home' so we assume that this is within the United Kingdom (UK), but even if it was not, British citizens can still be charged with murder if the unlawful killing was committed outside the UK

In the case of Bradley's death by Andrew – ***mens rea***:

The *mens rea* appears likely to be proven

- There is clear evidence that Andrew had direct intent to kill Bradley, as it was his aim, purpose or desire to kill, or his true desire to bring about the consequences of death having shot Bradley in the chest
- Failing any proof of an intent to kill, there is evidence of a direct intent to cause serious harm and would satisfy implied malice aforethought

In the case of coincidence of *actus reus* and *mens rea* – transaction theory:

- That there was *actus reus* and *mens rea* present at some point in the sequence in shooting Bradley (*mens rea*) and him dying at the quarry (*actus reus*)
- As long as the two elements of the offence of murder occur at some point in the sequence, the transactions will be joined, and Andrew can be guilty of murder.

In the case of Mavis' death – ***actus reus***:

The *actus reus* appears likely to be proven

- Bradley shoots Mavis which is the cause of her death both factually and legally
- Mavis is a human being and 'dies as a result' which clearly means brain death
- Even though Bradley is a soldier, he is home on leave so is not acting in a military capacity and is therefore under the Queen's Peace
- Bradley is at 'home' so we assume that this is within the United Kingdom (UK), but even if it was not, British citizens can still be charged with murder if the unlawful killing was committed outside the UK

In the case of Mavis' death – *mens rea*:

The *mens rea* appears likely to be proven

- While there may not have been a direct intent to kill Mavis, as Andrew was unaware she was in the corner and it is unlikely to have been his aim, purpose or desire to kill, or his true desire to bring about the consequences of her death
- In the absence of direct intent, it may be possible to prove indirect/oblique intent – the jury would be entitled to find Andrew's intent if death or serious bodily harm had been a virtual certainty and that Andrew appreciated that such was the case, based on all the evidence – firing a shot at a low height into a dark and very crowded room

Credit any other relevant point(s)

	AO1	Mark	AO2 1a/1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law.	9-10	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	12-15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law.	6-8	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	8-11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to case law.	3-5	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.	4-7

Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	1-2	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

9. Advise whether Thomas is guilty of any attempted offences.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.
Additional Guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers MAY:

Define and explain the law on attempted crimes:

- Criminal Attempts Act 1981 was a piece of codifying legislation in terms of key definitions of *actus reus* and *mens rea*
- *Actus reus* of an attempt found in section 1 (1) CAA 1981 – doing an act which is more than merely preparatory – *Gullefer, Jones, Campbell, Geddes, Tosti and White*
- *Mens rea* of an attempt – *Widdowson, Whybrow, Mohan, Walker and Hayles*
- Particular relevance of recklessness in relation to circumstances – *AG Ref. (No. 3 of 1992)* (1994)
- Conditional intent – *Easom, Hussey, AG Ref. (No. 1 and 2 of 1979)* (1979)
- Sentencing provisions can be as for the full offence.

Define and explain the law on attempting impossible crimes:

- Position relating to impossibility addressed in sections 1 (2) and section 1 (3) CAA1981 – *Anderton v Ryan, Shivpuri, Jones* (2007)

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include the following:

In the case of Richard's surfboard:

- Thomas' act appears to be one which is only capable of mere preparation as he is prevented on the approach by Richard's dog barking - *Gullefer, Geddes, Campbell*
- Thomas' act may be one capable of (although unlikely) of being '*more than merely preparatory*' under s.1(1) Criminal Attempts Act as he may have been close enough to the surfboard - *Jones, Boyle and Boyle*
- Thomas' intent was to commit the full offence (here possibly theft) – requiring proof of a decision to bring about the offence no matter whether the accused desired it or not – *Mohan, Whybrow*

In the case of throwing the rock at Mr Smith:

- Thomas' act is one capable of being '*more than merely preparatory*' under s.1(1) Criminal Attempts Act as he actually throws the rock and it is only because Mr Smith bends over that he is not hit by the rock - *Jones, Boyle and Boyle*
- Thomas' act is capable (although unlikely) to be one of mere preparation – in throwing the rock, Thomas goes beyond contemplation and planning into the crime proper - *Gullefer, Geddes Campbell*
- Thomas' intent was to commit the full offence (here possibly ABH or GBH) – requiring proof of a decision to bring about the offence no matter whether the accused desired it or not – *Mohan, Whybrow*

In the case of Jill's handbag:

- Thomas may still be liable for an attempted crime even though it is likely the offence is one of attempting the impossible – the crime was factually impossible as there was no specific subject matter, ie the purse he intended to take - s.1(2), *Shivpuri, Jones*.
- It is unlikely that the issue of conditional intent will apply here as Thomas' aim was to singularly steal her purse, not simply anything in the bag or anything of value
- Thomas' act is one capable of being '*more than merely preparatory*' under s.1(1) Criminal Attempts Act as he actually puts his hand into Jill's handbag in order to steal - *Jones, Boyle and Boyle*
- Thomas' act is capable (although unlikely) to simply be one of mere preparation – in putting his hand in the handbag,

Thomas goes beyond contemplation and planning into the crime proper - *Gullefer, Geddes Campbell*

- Thomas' intent was to commit the full offence (here possibly theft) – requiring proof of a decision to bring about the offence no matter whether the accused desired it or not – *Mohan, Whybrow*

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law.	9-10	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	12-15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law.	6-8	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	8-11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to case law.	3-5	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.	4-7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	1-2	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

10.* “The offence of involuntary manslaughter fails to meet the requirements of a modern society and needs to be reformed urgently.”
Discuss the extent to which this statement is accurate.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO3 1a: Analyse and evaluate legal rules and principles. 15 marks.
Additional Guidance	The ‘indicative content’ is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Discuss the extent to which this statement is accurate.

Answers **MAY**:

Define involuntary manslaughter – unlawful killing of a human being without the high level of *mens rea* required for murder
Explain that involuntary manslaughter covers a wide range of situations and this is reflected in the sentencing

Define unlawful act/constructive manslaughter:

- Unlawful act – this must be a criminal, positive act – *Lamb, Goodfellow, Newbury and Jones*
- Dangerous act – this is measured by an objective test but can be against a person or property and there must be a risk of physical harm – *Church, Mitchell, Goodfellow, Dawson*
- Unlawful act must cause death – *Cato, Dalby, Rogers, Kennedy*
- *Mens rea* is required for the initial unlawful act but there is no need to realise that the act is dangerous or unlawful, or to foresee a risk of harm – *Newbury and Jones*

Define gross negligence manslaughter – *Adomako*:

- Can be by positive act or omission.
- There must be a duty of care to the victim – *Khan and Khan, Wacker*
- There must be a breach of that duty

- The breach of duty must cause death
- The defendant's failure must be gross: 'so bad in all the circumstances as to amount to a criminal act or omission' - *Adomako* OR show 'such disregard for the life and safety of others' – *Bateman*
- There must be a risk of death – *Misra*

Define reckless manslaughter:

- Requirement of subjective recklessness – *Lidar*

Credit any other relevant point(s)

AO3 Indicative content

Answers **MAY**:

Discuss any or all of the following areas in the context of suitability in a modern society and the need for reform:

- Involuntary manslaughter is unwieldy as it covers too wide a range of situations in society
- In unlawful act manslaughter death may have been unexpected but if it occurs liability increases significantly, and the objective test creates liability even if the defendant did not foresee a risk of injury
- Law Commission recommended abolition in 1996 but then in *Murder, Manslaughter and Infanticide 2006* proposed new offence of criminal manslaughter – would this be more suitable in a modern society?
- Problem of circular test and inconsistent jury verdicts in gross negligence manslaughter
- Problems of gross negligence manslaughter using a test more at home in the civil law to define serious liability
- Law Commission 1996 proposal to have killing by gross carelessness but not enacted and then 2006 proposal to retain, with slight modification, present law on gross negligence manslaughter – would this be more suitable in a modern society?
- Law Commission 2006 proposal to abolish reckless manslaughter and to rely on second degree murder and gross negligence manslaughter – would this be more suitable in a modern society?
- Despite law reform proposals, does lack of action serve the criminal law well, does it adequately protect victims and punish defendants, will creation of second degree murder be helpful and if so how could it benefit a modern society?

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO3 1a	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law.	9-10	Excellent analysis and evaluation of a wide range of legal rules and principles. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion. There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.	12-15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law.	6-8	Good analysis and evaluation of a range of legal rules and principles. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion. There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.	8-11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to case law.	3-5	Basic analysis and evaluation of legal rules and principles. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion. The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.	4-7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	1-2	Limited analysis of legal rules and principles. The response has limited focus on the question. Discussion of any key points is minimal. The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

Mark Scheme

Assessment Objectives Grid

Questions	AO1	AO2 1a/1b**	AO3 1a	AO3 1b	Total
1-2	10	0	0	0	10
3-4	0	0	0	15	15
5 or 8	10	15	0	0	25
6 or 9	10	15	0	0	25
7* or 10*	10	0	15	0	25
Total	40	30	15	15	100

**AO2 elements 1a and 1b will be awarded jointly

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