



Oxford Cambridge and RSA

GCE

Law

H015/01: The legal system and criminal law

Advanced Subsidiary GCE

Mark Scheme for November 2020

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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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Annotations

Annotation	Meaning
	Not Relevant or no response or response achieves no credit
	Correct
	Point
	Developed point
	Developed point extended
	Additional comment/discussion point
	Acknowledgment of response
	Repeat
	Not answering the question
	Blank Page
	May be used to draw attention to addition material eg conclusion, reform
	The highlight tool may also be used to draw attention to a word or phrase which means that the statement or reasoning is inaccurate

ASSESSMENT OBJECTIVES: BREAKDOWN BY QUESTION**Section A**Questions **1-3**

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

Assessment Objective:	AO3 1b: Analyse and evaluate legal principles. 10 marks
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Section B

Question

Assessment Objective:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks
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Questions **6 and 7**

Assessment Objective:	AO2 1a/1b: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 10 marks
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Question **8***

Assessment Objective:	AO3 1a: Analyse and evaluate legal principles. 10 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.

Section A

Answer	Marks	Guidance
<p>1 Explain how it is decided whether a person is entitled to government funding in a civil case.</p> <p>Answers may include the following:</p> <p>Legal Aid, Sentencing and Punishment of Offenders Act 2012 sets out the rules about who qualifies for civil legal aid. Civil legal aid is only available to cover specific types of civil dispute including:</p> <ul style="list-style-type: none"> • Family • Housing • Asylum and immigration • Debt • Welfare benefits and council tax reduction • Mental health/mental capacity • Education • Discrimination <p>s11(3) sets out the factors taken into account when deciding whether to grant Government funding for civil case (merits test):</p> <ul style="list-style-type: none"> • the likely cost of providing the services and the benefit which may be obtained by the services being provided • the availability of resources to provide the services • the appropriateness of applying those resources to provide the services • the importance for the individual of the matters in relation to which the services would be provided 	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>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 law. A clear explanation of how it is decided whether a person is entitled to funding in a civil case.</p> <p>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 law. An adequate explanation of how it is decided whether a person is entitled to funding in a civil case.</p> <p>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 law. A basic explanation of how it is decided whether a person is entitled to funding in a civil case.</p> <p>Level 1 (1-2 marks) Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail.</p>

Answer	Marks	Guidance
<ul style="list-style-type: none"> • the nature and seriousness of the act, omission, circumstances or other matter in relation to which the services are sought • the availability to the individual of services • the individual's prospects of success in the dispute • the conduct of the individual in connection with any legal proceedings or other proceedings for resolving disputes about legal rights or duties • the public interest <p>Means Test Applicants need to show they do not have enough money to pay for legal proceedings. This is worked out by looking at disposable income and disposable capital <u>Disposable income</u> = gross income less:</p> <ul style="list-style-type: none"> • tax and NI • housing costs (mortgage or rent) • child maintenance and/or childcare costs • allowance for dependents <p>Current minimum disposable income level = £317 Between £317-£733 applicant will be required to make a contribution. Above £733 no legal aid</p> <p><u>Disposable Capital</u> – assets including:</p> <ul style="list-style-type: none"> • savings • investments • stocks and shares • valuable items eg jewellery • equity over £100,000 in mortgaged property <p>If assets equal £8000 or above, no legal aid will be available.</p> <p>Credit any other relevant point(s)</p>		<p>Level 0 (0 marks) No response or no response worthy of credit.</p>

Answer	Marks	Guidance
<p>2 Describe the non-custodial sentences available to an adult offender</p> <p>Answers may include the following:</p> <p>Community Orders S177 Criminal Justice Act 2003 - sets out that where an adult offender has been convicted of an offence, the court may make a Community Order imposing on the offender one or more of the following requirements:</p> <ul style="list-style-type: none"> • an unpaid work requirement - between 40-300 hours and only granted if the court is satisfied that the offender is a suitable person to perform work under such a requirement • a rehabilitation activity requirement - the offender must comply with any instructions given by the responsible officer to attend appointments or participate in activities or both. The activities purpose must be reparative, such as restorative justice activities • a programme requirement - offender must participate in an accredited programme • a prohibited activity requirement - offender must refrain from participating in activities specified in the order eg attending certain football matches • a curfew requirement - offender must remain at a specified place between 2-16 hours in a 24-hour period • an exclusion requirement - offender is prohibited from entering a specified place for a specified period • a residence requirement - the offender must reside at the place specified in the order. • a foreign travel prohibition requirement - this order prohibits the offender from travelling for a specified 	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>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 law. There will be excellent description of the types of non-custodial sentences available to an adult offender.</p> <p>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 law. There will be good description of the types of non-custodial sentences available to an adult offender.</p> <p>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 law. There will be adequate description of the types of non-custodial sentences available to an adult offender.</p> <p>Level 1 (1-2 marks) Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. The description of the types of non-custodial sentences available to an adult offender is limited.</p>

Answer	Marks	Guidance
<p>period of time to any country or territory outside the British Islands</p> <ul style="list-style-type: none"> • a mental health treatment requirement • a drug rehabilitation requirement - the offender must agree to submit to treatment with a view to the reduction or elimination of the offender's dependency on or propensity to misuse drugs. Must be prepared to provide samples at such times as set out in the order • an alcohol treatment requirement • an alcohol abstinence and monitoring requirement • an attendance centre requirement (if offender under 25) • an electronic monitoring requirement <p>Other non-custodial sentences:</p> <p>Fines:</p> <ul style="list-style-type: none"> • Magistrates' Court - up to £5,000 in respect of summary matters. Legal Aid, Sentencing and Punishment of Offenders Act 2012 removed the £5,000 fine limit on offenders who have committed serious Level Five offences • Crown Court - unlimited fines <p>Discharges:</p> <ul style="list-style-type: none"> • Conditional discharge - discharged on condition no further offence is committed within a certain time frame • Absolute discharge - offender found guilty of the crime but no penalty imposed. <p>Driving bans Compensation Orders</p> <p>Credit any other relevant point(s)</p>		<p>Level 0 (0 marks) No response or no response worthy of credit.</p>

Answer	Marks	Guidance
<p>3 Describe the ways of resolving a civil dispute using Alternative Dispute Resolution</p> <p>Answers may include the following:</p> <p><u>Negotiation</u></p> <ul style="list-style-type: none"> • Conflicting parties attempt to reach a settlement between themselves • Lawyers may negotiate on behalf of their client <p><u>Mediation</u></p> <ul style="list-style-type: none"> • A voluntary and flexible process - both parties must agree to participate • Parties can decide the form the process takes • A neutral person (mediator) will facilitate and assist parties in reaching a compromise solution • No opinion will be offered by the mediator unless asked for by the parties • Aim is to seek common ground • At the end of mediation, the agreement (compromise) is not legally binding • The parties retain control over the process and may withdraw at any time • Important in family cases such as divorce as a requirement before starting court proceedings <p><u>Conciliation</u></p> <ul style="list-style-type: none"> • Similar to mediation, conciliation is a voluntary and flexible process - both parties must agree to participate • Parties can decide the form the process takes 	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>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 law. There will be excellent description of the ways of resolving a civil dispute using Alternative Dispute Resolution.</p> <p>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 law. There will be good description of the types of ways of resolving a civil dispute using Alternative Dispute Resolution.</p> <p>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 law. There will be adequate description of the ways of resolving a civil dispute using Alternative Dispute Resolution.</p> <p>Level 1 (1-2 marks) Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. The description of the ways of</p>

<ul style="list-style-type: none"> • A neutral person (conciliator) will play an active role in the process suggesting grounds for compromise • At the end of conciliation, the agreement is not legally binding • The parties retain control over the process and either party may withdraw at any time <p><u>Arbitration</u></p> <ul style="list-style-type: none"> • The process whereby both parties voluntarily submit their claim to private arbitration and to the judgement of some person other than a judge • Private arbitration is governed by the Arbitration Act 1996 and is only applicable to written arbitration agreements eg a Scott v Avery clause in a contract • S.15 Arbitration Act states that parties can name a particular arbitrator or provide a method for choosing one and are free to agree the number of arbitrators • Parties may agree to use arbitration at any time • The hearing can be: <ul style="list-style-type: none"> ○ in the form of ‘paper’ arbitration where the matter is dealt with without the need for parties to attend a hearing or ○ a formal court like hearing • The decision of the Arbitrator(s) is called an award • Awards are final and binding on the parties and can be enforced by the courts • s68 Arbitration Act states that the award can be challenged in the courts for serious irregularity in the proceedings or on a point of law <p>Credit any other relevant point(s)</p>		<p>resolving a civil dispute using Alternative Dispute Resolution is limited.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>
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Answer	Marks	Guidance
<p>4 Discuss the advantages of using Alternative Dispute Resolution to solve a civil dispute</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • A key advantage of ADR (alternative dispute resolution) is that lawyers are not required. This saves both time and money and makes the process less adversarial and as a result encourages cooperation between the parties • ADR is cheaper than using the courts. There will be no court costs. However, there are a number of commercial organisations offering ADR services which require a fee to be paid but this is still usually cheaper than court • ADR tends to be quicker than court. There is less waiting time for the hearing and matters tend to be settled more quickly than the courts • Using the Mediation and Assessment Meeting for family matters speeds up the process and allows, for example, separating couples to sort out their affairs before attending court. It shows the court a willingness to work together • The ADR process is flexible. The parties can choose where and when the hearing takes place and there is not the formality of the courts. This makes the process less intimidating • ADR allows for experts in the issue to be used. Whilst the experts may lack the legal knowledge they will be able to play a more inquisitorial and active role in assisting with the dispute • ADR is carried out in private with only the parties and the mediator/conciliator/arbitrator present for the 	<p>10 AO3 1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9-10 marks) Excellent analysis and evaluation of a wide range of legal concepts. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed.</p> <p>Level 3 (6-8 marks) Good analysis and evaluation of a range of legal concepts. The response has a mainly consistent focus on the question. Most of the key points are discussed and well developed.</p> <p>Level 2 (3-5 marks) Basic analysis and evaluation of legal concepts. The response is partially focused on the question. Some of the key points are discussed and partially developed.</p> <p>Level 1 (1-2 marks) Limited analysis of legal concepts. The response has limited focus on the question. Discussion of any key points is minimal.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	<p>hearing. This allows matters to be dealt with in the absence of the press or the public</p> <ul style="list-style-type: none">• Using Arbitration means that there will be a legally binding decision at the end of the hearing. This will be reached using an expert in the field and ensures the dispute is resolved• The strict letter of the law does not need to be followed allowing for a more 'common sense' approach to be taken <p>Credit any other relevant point(s)</p>		
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Section B

	Answer	Marks	Guidance
5	<p>Explain how causation is proved in criminal law.</p> <p>Answers may include the following:</p> <p>Causation is proved by looking at two elements – legal and factual causation</p> <ul style="list-style-type: none"> • Causation in fact must be proved – the ‘but for’ test – without the defendant’s act the prohibited consequence would not have occurred – <i>White, Pagett</i> • Causation in law must also be proved. Legal causation is composed of various common law rules such as: <ul style="list-style-type: none"> ○ The defendant’s act must be more than minimal cause of the harm – <i>Kimsey</i>. ○ Take your victim as you find them – <i>Hayward, Blaue</i>, <p>Chain of causation can be broken by an intervening act:</p> <ul style="list-style-type: none"> ▪ Medical treatment – <i>Smith</i> ▪ Life support machines – <i>Malcherek and Steele</i> ▪ Victim’s own act and ‘daftness’ – <i>Roberts</i> ▪ Free voluntary and informed action of third parties – <i>Pagett</i> <p>Credit any other relevant point(s).</p>	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
6	<p>Advise how the law relating to non-fatal offences against the person will apply to Aaron.</p> <p>Answers may include the following:</p> <p>Aaron: In the case of Aaron grabbing Bethany's arm</p> <ul style="list-style-type: none"> • Identify battery under s39 CJA 1988 – define <i>actus reus</i> and <i>mens rea</i> • This could satisfy battery as the grab/taking hold of her arm firmly is an unwanted touching • The grab/taking hold of her arm firmly was unlawful as it was intentional <p>In the case of Aaron pushing Bethany backwards</p> <ul style="list-style-type: none"> • Identify s20 OAPA 1861 – define <i>actus reus</i> and <i>mens rea</i> • The deep cut/stiches/hospitalisation will constitute a wound making a charge of s20 or s18 likely • Aaron acts unlawfully and maliciously, but not intentionally, as he pushes Bethany so s20 applies. <p>Credit any other relevant point(s).</p>	<p>10 AO2 1a/1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9–10 marks) 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.</p> <p>Level 3 (6–8 marks) 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.</p> <p>Level 2 (3–5 marks) 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.</p> <p>Level 1 (1–2 marks) 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.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
7	<p>Advise how the law relating to non-fatal offences against the person will apply to Bethany.</p> <p>Answers may include the following:</p> <p>Bethany: In the case of Bethany shouting at Aaron</p> <ul style="list-style-type: none"> • Identify assault s39 CJA 1988 – define <i>actus reus</i> and <i>mens rea</i> • Shouting could put Aaron in fear of immediate and unlawful personal violence as words can constitute an assault • Bethany appears to have intention or at least subjective recklessness. <p>In the case of Bethany punching Aaron</p> <ul style="list-style-type: none"> • Identify s47 OAPA 1861 – define <i>actus reus</i> and <i>mens rea</i> • Aaron’s broken nose is an injury which interferes with his health and comfort • There is clear evidence that Bethany acted intentionally as she punches him in the face and unlikely for her to be subjectively reckless <p>Credit any other relevant point(s).</p>	<p>10 AO2 1a/1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9–10 marks) 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.</p> <p>Level 3 (6–8 marks) 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.</p> <p>Level 2 (3–5 marks) 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.</p> <p>Level 1 (1–2 marks) 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.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
8*	<p>Discuss the problems with the offence of s18 Offences Against the Person Act 1861, and the extent to which reform of the law would make the definition fairer. [10]</p> <p>Candidates may develop the following points:</p> <ul style="list-style-type: none"> • The 1861 Act is complex and outdated in its language • The question of what is a wound is complex – a minor cut could be charged under s18 • GBH has not been clearly interpreted by judges • GBH is outdated in that it focused on bodily harm and not psychiatric injury and development has been piecemeal • The use of the word ‘<i>cause</i>’ in s18 clashed with the use of the word ‘<i>inflict</i>’ under s20 but has now been clarified • The <i>mens rea</i> is complex as it contains two types of intention – intention to do some gbh and to resist arrest. • There is a large gap between s20 and s18 Law Commission plans to codify and update the law have not been implemented but re-drawing the definitions and sentences would make the law easier to understand and therefore also fairer. • This would be because the new law would better reflect issues connected to both physical and mental health • Better defined offences and sentencing would give the criminal justice system greater credibility as it would have a clearer moral basis <p>Credit any other relevant point(s).</p>	<p>10 AO3 1a</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9–10 marks) 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.</p> <p>Level 3 (6–8 marks) 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.</p> <p>Level 2 (3–5 marks) 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.</p> <p>Level 1 (1–2 marks) Limited analysis of legal rules and/or principles. The response has limited focus on the question. Discussion of</p>

			<p>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.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>
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