



Level Law

7162/1 Paper 1

Report on the examination

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Introduction

Performance across the paper showed that there were a significant number of students who were able to produce strong answers across the range of substantive and non-substantive topics. In higher tariff questions, stronger responses combined accurate legal knowledge and analysis to successfully build a legal argument and present a well-supported conclusion.

Although it was evident that there were some impressive answers across the range of questions, common issues in less successful responses included a lack of accuracy in explaining legal principles, unclear application and inability to address the question.

In addition, there were still some instances of outdated law being used. This was seen in question 11 in relation to dishonesty in theft. The objective test from *Ivey v Genting Casinos Ltd*, confirmed in *Barton and Booth*, should now be used in place of the *Ghosh* test.

There were fewer instances of questions not being attempted, indicating that most students are able to manage their time effectively. Where a question was not attempted, or where a student included a brief answer, this seemed to be due to gaps in knowledge and understanding rather than time management.

Question 01

The correct answer was D: The reasonable person must foresee the risk of some harm. About 60% of students identified the correct answer.

The most common wrong answer selected was B which was incorrect as it describes a subjective test.

Question 02

The correct answer was C: The defendant can be liable for intended harm caused to an unintended victim.

About 90% of students identified the correct answer.

Question 03

The correct answer was B: A court does not apply a precedent from an earlier case because significant facts are different in the current case.

About 60% of students identified the correct answer.

The most common wrong answer selected was C which indicated some confusion between the methods of avoiding judicial precedent.

Question 04

The correct answer was D: Circuit judges can preside over a trial in the Crown Court.
About 40% of students identified the correct answer.

The most common wrong answer selected was A which was incorrect as Circuit judges do not hear appeals within the Court of Appeal (Civil Division) although they may within the Court of Appeal (Criminal Division)

Question 05

The correct answer was A: A barrister.
About 60% of students identified the correct answer.

Wrong answers were evenly spread across the remaining options. This suggests that students are unfamiliar with the different roles of legal personnel.

Question 06

This question required students to explain what is meant by a triable either-way offence and explain one possible route of appeal available to the defendant following conviction for such an offence.

The first part of the question was answered well, with most students providing an explanation that included how such offences are middle-range offences that can be tried either in the Magistrates' or Crown Court. Development often included an example such as theft or how the venue is decided. Answers to the second part of the question were generally less successful. Although most students identified an appeal court by name, they did not explain the route of appeal and so could not achieve maximum marks.

Question 07

The question directed students to suggest why, in the circumstances of the scenario, Arnold is likely to succeed if he pleads the defence of involuntary intoxication.

A good answer first provided an explanation of involuntary intoxication which might have included that involuntary intoxication is where the defendant becomes intoxicated through no fault of his own. This was developed to explain that the defence is a complete defence and available to any crime as long as it is shown that the defendant did not have mens rea (Kingston)

Elements should then be applied to the facts of the scenario to suggest that Arnold became involuntarily intoxicated when Cady put drugs into his drink without his knowledge and so he

was not reckless/ at fault as to his intoxication. Students should conclude that, in the absence of mens rea, the defence is likely to succeed.

Although not required for maximum marks, it was pleasing to see that many students identified that Arnold had been charged with a basic intent offence (under s20 of the Offences Against the Person Act 1861) and commented that as he had become involuntarily intoxicated, he had not been reckless in becoming intoxicated. Less successful answers identified the phrase 'loss of control' in the scenario and addressed their responses to that legal defence.

Answers that did not follow the question's direction and included detailed discussion of the s20 offence without any discussion of the defence of involuntary intoxication were not credited.

Question 08

A good answer might have included:

- identification and outline explanation of the elements needed to prove the offence of gross negligence manslaughter
- application of each of the elements to the facts of the scenario to explore whether they were satisfied.
- a conclusion clearly advising whether Dylan is criminally liable for the gross negligence manslaughter of Ellis based on the arguments presented.

There were many good answers to this question which followed a logical approach by explaining and applying each element of the offence before reaching a conclusion. Good answers explained the framework of the offence as set out in *R v Adomako* (1995) or *R v Broughton* (2020). Strong answers then applied each element with careful consideration given to the facts of the scenario to construct their legal argument.

Students recognised that the defendant must owe a duty of care to the victim and applied this to suggest that a duty of care exists between Dylan and Ellis as she has engaged his services as a chef to provide her with food safe for her consumption. Less successful answers attempted to establish a duty of care that was not supported by the facts of the scenario e.g. duty through an official position.

Many responses established that defendant must breach their duty of care, and this was applied to the facts to suggest that Dylan's not checking emails containing allergy information and as a result not adjusting his recipe for Ellis amounts to a breach of duty. When considering whether the breach of duty gives rise to a serious and obvious risk of death which the reasonable person would foresee, many answers suggested that Dylan's failures create an obvious risk of death as he was providing food to customers and stated that all recipes will be amended in response to allergy information. This was developed to recognise that severe nut allergies can be fatal and so this supports the 'risk of death' element. Stronger answers debated whether this would be enough to constitute an 'obvious' risk of death and one that was present at the time of the breach of duty. Less successful answers did not fully explain their reasoning and/or incorrectly asserted that there need be a risk of serious injury only.

Many students showed understanding of the requirement that the breach of duty cause the death of the victim and were largely able to explain and apply the rules of causation. Stronger answers recognised that as Ellis had a nut allergy, the thin skull rule would apply. Therefore, Dylan providing Ellis with food containing nuts caused her death, affirming that her allergy cannot be used to escape liability as he must take Ellis (the victim) as he finds her.

Treatment of the final element, that defendant's conduct was so exceptionally bad in all the circumstances that it would be considered a crime, was generally weaker as many explanations of 'gross' lacked development and amounted to no more than a repetition of the assertion that Dylan's negligence was gross. Less successful answers did not address each element or confused elements with those required for the offence of unlawful act manslaughter.

Question 09

This question required students to address two aspects:

- the meaning of justice
- the extent to which the defence of insanity may achieve justice

When examining the meaning of justice a typical answer might have included:

- an examination of the meaning of justice which may involve offering synonyms for, and/or explanations of, what justice might entail – e.g. fairness and equal treatment and some provided a dictionary definition.
- explanation and evaluation of philosophical theories of justice (including those of Aristotle, Bentham, Marx, Rawls and Nozick), linked to aspects of the English legal system.
- explanation of different types of justice (for example, corrective justice, procedural justice, or substantive justice), examined in the context of the English legal system to illustrate the presence or lack of a particular type of justice.

Students appeared well prepared to answer the first aspect of the question and illustrative examples were wide-ranging. Less successful answers gave explanation of theories but provided no reference to justice.

With respect to the substantive aspect, a strong answer included analysis and evaluation of whether justice is promoted by the existence of the defence of insanity, and whether taking either a positive or negative or balanced view.

Students provided a range of discussion points that may have included:

- that justice is achieved by providing a defence to those who are not truly responsible for their conduct and its consequences.
- Justice may not be achieved as the defendant may have a disease of the mind and defect of reason but is not able to use the defence if they know what they did was wrong.
- the difference in outcomes for those with hypoglycaemia and hyperglycaemia
- justice is achieved through the special verdict of "not guilty by reason of insanity" and the judge's discretion to order detention in secure hospital, as this will allow the defendant to

receive treatment. This point was often countered by exploring how this form of detention, rather than prison, may not be viewed favourably by the victim/their family/ the public or the defendant themselves.

Question 10

Question 10 required students to include:

- the offence of murder in relation to Gail
- the defence of loss of control in connection to the murder
- the offence of assault occasioning actual bodily harm in relation to the injury suffered by Hal

It was pleasing to see that many students were able to identify the full range of issues this year and those who did scored highly.

The first aspect related to the murder of Gail. There were many excellent answers considering the law on murder and most students were able to confidently explain and apply the actus reus (unlawful killing, reasonable person in being, Kings peace) and outline the rules of causation. Less successful answers did not provide application and analysis based on the facts of the scenario to examine the significance of the 'speeding' van as an intervening event and whether the van hitting and killing Gail would be enough to remove liability from Frank. When explaining and applying the mens rea for murder (malice aforethought: express or implied) stronger answers used the facts of the problem to suggest that Frank grabbing Gail and pushing her into the busy road constitutes strong evidence of direct intention to kill or at least to cause serious injury. Credit was also given to answers that accurately provided a supported argument to suggest the presence of oblique intention through foresight of consequences. In some less successful answers, there was confusion about malice aforethought and intention, often conflating implied malice with indirect intent.

The second aspect of the question required students to consider the loss of control defence in relation to the murder of Gail. Explanations were greatly improved from previous examinations, and many answers successfully gave the framework of the defence from the Coroners and Justice Act 2009 s54:

- Loss of control
- Qualifying trigger
- Degree of tolerance, objective test
- Consideration of relevant excluded matters

Students were required to outline each element of the defence and to identify relevant facts within the scenario to construct their legal argument.

Many answers identified the first element (loss of control) however some did not provide further explanation and simply asserted that Frank has lost control. Stronger responses provided a legal definition (Jewell) and recognised the possibility that Frank was acting in a desire for revenge and provided legal argument to suggest that this may mean that Frank did not experience a loss of self-control. Responses then countered this and discussed the circumstances around the point at which Frank 'immediately' grabbed Gail.

When considering the qualifying trigger, many responses included detailed explanations of the fear trigger. Such explanations were not required as it was not relevant to the facts of the scenario. Stronger answers provided detailed analysis of the facts and connected the loss of control to the anger trigger requirement, arguing that the 'things said or done', which included the laughter, taunts and the suggestion that Gail would take the children away from the home, may have 'constituted circumstances of an extremely grave character'. Answers then discussed whether the things said or done would cause Frank to have 'a justifiable sense of being seriously wronged' by presenting supporting and opposing legal arguments and identifying that this is judged objectively. When addressing the degree of tolerance test it was pleasing to see a range of reasoned arguments. The most common was that it is unlikely that a person with a normal degree of tolerance and self-restraint and even in the circumstances of the defendant (including sexual infidelity) might act in a similar way by pushing their wife into the busy road and therefore concluding that the defence is likely to fail. Credit was given to other well-reasoned conclusions.

Less successful responses gave only partial discussion of the defence or confused elements with other substantive topics such as diminished responsibility and self-defence. Some responses showed confusion in relation to the effect of evidence of sexual infidelity asserting that the defence would fail due to its presence and provided no further discussion relating to other elements of the defence or facts from the scenario that could support a trigger.

When considering the injury suffered by Hal, there were many excellent answers that addressed this aspect. Such responses correctly identified the offence under s47 OAPA 1861 (Assault occasioning actual bodily harm) and many students successfully explained and applied the actus reus elements of the offence followed by explaining the rules of causation. Stronger answers used the facts of the problem and analysed the victim's own act in running away as a possible intervening act. Less successful answers considered liability for assault only and did not recognise that the bruised knee satisfies the ABH (minor injury) requirement. Many answers accurately explained the mens rea and suggested that the mens rea for assault would be established through intention or at the least subjective recklessness due to the language Frank used ('You are next') which may be designed to instil fear in Hal and so satisfying the mens rea of the s47 offence.

Question 11

Answering Question 11 required students to include:

- The offence of theft in relation to Indira picking the 'wild' flowers
- The offence of theft/robbery in relation to Kris against Lyn and attempted theft/robbery in relation to Kris against Indira
- The defence of duress
- The role of magistrates.

Students appeared well prepared for this question and followed a logical approach by explaining and applying each element of the offences before reaching a conclusion. However, less successful answers did not address the non-substantive element.

When addressing the first aspect many responses provided an outline of the elements of theft (dishonest, appropriation, property, belonging to another with the intention of permanently depriving the other of it) and included relevant authority. When applying to the facts relatively few answers recognised that the flowers were land ('real property') which could be stolen by 'severing' (and so also 'appropriating') them if the person doing so (Indira) was not in possession of the land. However, many answers did include application to suggest that because the flowers were 'wild' flowers, Indira could only be guilty of theft if, in doing so, she had a purpose which included to sell them. Such answers used the facts of the problem to confirm that this was the case.

Responses generally made a good attempt at applying the mens rea elements with many responses suggesting that it is likely that a s2 exception may apply as Indira may think she had consent or a legal right as the flowers were 'wild'. This position was often countered through consideration of the Barton and Booth test for dishonesty.

Less successful answers did not recognise that the 'wild' flowers could be classed as property or did not appreciate that the woodland where Indira picked the flowers must belong to somebody and ended their discussion of theft either at 'belonging to another' or in some cases at 'appropriation'.

The second aspect required students to consider theft and robbery in relation to Kris. Again, there were many good answers that successfully outlined the elements of the offence of robbery and raised discussions around the use of force, and whether it was used in order to steal, by considering the force in the bargaining, or, if that force is too dissociated from the theft, 'snatching' as within the use of force on a person to assist the theft.

Although not required for maximum marks, there was scope for students to discuss attempted robbery/theft in relation to Kris against Indira and this was treated as an enhancement for ICG2. Relatively few responses discussed attempt offences. However, those that did showed good understanding of s1. of the Criminal Attempts Act 1981 and used a range of cases to support their explanations.

The third aspect required students to discuss the defence of duress. This was generally done well with many responses accurately outlining the elements of the defence and providing a range of legal authority to support their answers. Stronger responses recognised a range of issues within the facts of the scenario and provided detailed analysis which included consideration of safe avenue of escape, the link between the threat and offence committed (Cole) and voluntary association (Sharp). Less successful answers did not include the objective element (Bowen) and/or did not provide a conclusion relating to the legal effect of the defence on the liability of Kris.

The final aspect required students to assess the role magistrates might play if Indira went to trial in the Magistrates' court. This aspect of the answer was generally less successful when compared to the substantive elements. Good answers included explanation of a range of roles including:

- Applying the law with support from the legal adviser
- Reaching a verdict

- Passing sentence if the defendant is found guilty or if outside of their jurisdiction, committing for sentence to the crown court.

Less successful answers did not follow the direction in the question and discussed pre-trial matters or strayed into selection and appointment of magistrates, which could not be credited.

Mark Ranges and Award of Grades

Grade boundaries and cumulative percentage grades are available on the [Results Statistics](#) page of the AQA Website.