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# A-LEVEL **LAW**

7162/1 Paper 1  
Report on the Examination

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## **Introduction**

From this exam season it was evident that there were some impressive answers across the range of questions and it was pleasing to see that there were fewer instances of the question not being attempted particularly for Questions 09, 10 and 11.

Students should be reminded to focus directly on the specific requirements of the question as conveyed by the instruction. For example, question 07 directed students to deal with actus reus in relation to a battery, however, many focussed on the mens rea.

In Questions 10 and 11, students were required to deal with the identification, explanation and application of substantive law arising out of the facts in a scenario. As in previous years, a number of students failed to identify and explain the full range of issues presented in the scenario.

In addition, Question 11 required application of some aspect of the English Legal System, a large number of students addressed only the substantive law aspect in this question.

## **Question 01**

The correct answer was D

‘The defendant’s mental functioning was substantially impaired’

This answer was selected by about 85% of students, showing good understanding of the defence of diminished responsibility.

The most common wrong answer was A which related to the defence of loss of control.

## **Question 02**

The correct answer was A

‘A person may be liable even though they took all reasonable care’

This answer was selected by about 70% of students.

The most common wrong answers were B and C. B was incorrect because although many strict liability offences are punishable with a fine, others, for example those within the Road Traffic Act relating to driving under the influence, can be punishable by a term of imprisonment.

C was incorrect because actus reus must be present, however mens rea does not need to be proven.

## **Question 03**

The correct answer was C

‘Magistrates can try indictable only offences’

This answer was selected by about 65% of students.

The most common wrong answer was D. This answer was incorrect because an appeal against the decision of the magistrates’ court can be heard by a judge and magistrate(s) in the Crown Court.

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**Question 4**

The correct answer was D

‘The defendant’s trial will involve consideration of a substantial point of law’

This answer was selected by about 65% of students.

D is correct as it appears within the interests of justice test.

About 25% of students incorrectly selected B. This was incorrect as previous convictions will not be considered as part of the interests of justice test when deciding eligibility for state funding.

**Question 05**

The correct answer was D

‘The defendant used a weapon during the offence’

This answer was selected by about 85% of students.

Incorrect answers A, B and C were selected in almost equal proportions. They were incorrect answers because they relate to mitigating factors in sentencing.

**Question 06**

This question required students to explain **two** aspects of the role of the judge in a criminal case.

The expectation was that students would be able to identify and briefly explain any two of the following:

- conducting a pre-trial preparation hearing: determining any pre-trial issues, eg fixing a trial date, granting of bail etc.
- controlling the conduct of the trial: opportunity for each side to present its case fully; rulings on the admissibility of evidence
- determining the interpretation and application of law: giving directions on law to the jury in a Crown Court trial
- summing-up the evidence in the case in a Crown Court trial
- sentencing in consequence of a conviction or guilty plea

Many students were able to identify two of the above and offer some explanation. Those who offered no explanation or only identified one aspect could not access the highest band.

Frequently students wrote about sentencing, however few offered any further explanation. Stronger answers added that this occurs after conviction or guilty plea. Others also included reference to aggravating and mitigating factors that may be considered when sentencing.

A high number of students stated that a judge will decide the verdict within a criminal case. To gain full credit for this aspect students needed to add that this will be done by District Judges (Magistrates’ courts).

**Question 07**

In question 07 the facts of the scenario were that Adil pushed Bina towards a crowd of people. The force from the push caused Bina to fall against Caleb, knocking him off balance.

The question directed students to suggest why Bina does not satisfy the required actus reus for the offence of battery against Caleb.

A good answer required:

- An outline explanation of the actus reus of battery
- Explanation and application relating to the need for an act forming the actus reus to be voluntary.
- Concluding that because Bina had no control over her movement she did not satisfy the actus reus for battery.

Answers that followed the structure above scored highly and, although not required, many students were able to make good use of cases such as *Hill v Baxter* to support their answers. Other good answers considered automatism to support their conclusion.

In any question worth five marks students need to be particularly careful not to cover material that is not relevant. Many low scoring answers did not follow the question's direction and offered detailed discussion of Adil's criminal liability and transferred malice. Although these answers often showed correct legal explanation they did not address the question asked and could not receive credit.

### Question 08

In question 08 the facts of the scenario were that Dan was helping his neighbour, Emma, build a patio and instead of putting waste plants in the rubbish bin he removed them and planted them in his own garden. After completing the project Emma asked Dan to take £20 from her bag but he took £30 instead. The question directed students to advise Dan of his criminal liability for theft.

A good answer required:

- Explanation of the actus reus and mens rea of the offence of theft
- Analysis and application of the actus reus and mens rea of theft in relation to the facts

Students appeared well prepared for this question and followed a logical approach by explaining and applying each element of theft before reaching a conclusion.

When addressing the actus reus strong answers outlined the elements (appropriation, property, belonging to another) and included relevant authority. When discussing appropriation many students discussed the appropriation of the plants when Dan took them and planted them in his own garden. However, few students addressed the issue of consent to the initial appropriation of the plants, as well as consent to appropriation of the £20, though not the additional £10.

When discussing types of property within the scenario many students outlined section 4(1) of the Theft Act concluding that the additional £10 and the plants amount to property.

Strong answers cited s4(2)(b) and recognised that when severed from the land, although always property, the plants could now be 'stolen'. They connected the appropriation subsequent to severing the plants to conclude that there was a dishonest, appropriation of property when Dan moved the plants (without permission) and replanted them in his own garden.

Weaker answers failed to recognise, based on the facts, that the plants were growing in Emma's garden and were not growing 'wild'. Due to this error many students incorrectly applied the law concluding that the plants would not be considered property.

Next students should consider whether or not the property would be classed as belonging to another. Strong answers stated that the £10 still belonged to Emma as Dan was not instructed to

take it and the plants still belonged to Emma regardless of her instruction to place the plants in her rubbish bin, concluding that Emma was still in possession or control of the property under s5(1). Weaker answers failed to address this element or simply stated that the property did belong to Emma without offering any legal explanation/ further application.

In relation to mens rea, most students offered a brief explanation of the elements (dishonesty, intention to permanently deprive). More perceptive students used the facts of the scenario and explored provisions under s2(1) regarding situations when a person will not be considered dishonest. Offering arguments to suggest that as the plants were due to be thrown away it is possible that Dan believed he would have Emma's consent to take them s2(1)(b). In relation to the £10, many raised the fact that Dan believed that he was entitled to the money due to the amount of work that he had done and linked this to s2(1)(a).

Although many answers presented these arguments they often failed to offer any conclusion regarding the likelihood of any such arguments being successful.

Strong answers also addressed the issue of dishonesty through the objective test confirmed in Barton and Booth, concluding that it is likely that ordinary, reasonable people would see Dan's conduct as dishonest because he took the property without permission.

It was surprising to see that when explaining dishonesty within theft many students relied on old law. It is important to note that the objective test from Ivey v Genting Casino Ltd, confirmed in Barton and Booth, should now be used in place of the Ghosh test.

The final element of the mens rea (intention to permanently deprive) was omitted from a high number of answers. This element should be addressed, although only briefly in this instance. Answers which addressed it stated that there were no facts to suggest that Dan intended to give the property back and so he had intention to permanently deprive Emma of it. This was sufficient for this element within the answer.

## Question 09

Question 09 required students to address two aspects:

- the meaning of 'justice' (10 marks)
- the extent to which the law on non-fatal offences may achieve justice. (5 marks)

With respect to the justice aspect, a typical answer might have included:

- A definition of justice perhaps in terms of a dictionary definition or in terms of concepts such as fairness and equality of treatment.
- Consideration of a range of theories of justice for example: distributive justice, utilitarianism, social justice etc. developed to consider how they have been embedded within the criminal justice system.
- A selection of explained examples considering areas from criminal and/ or civil law

Students were well prepared to answer the first aspect of the question. A high number of students offered explanations of various theories and types of justice including corrective justice and procedural justice.

When discussing theories of justice many students added the thoughts of notable philosophers including Aristotle, Aquinas and Mill. Few answers offered analysis of the importance of philosophical theories of justice and how they have been embedded within the criminal justice

system. However, those who did, often made connections with the rule of law or identified specific mechanisms of achieving justice such as the use of the jury or the appeal system.

Less successful answers often made only a vague reference to justice in terms of 'fairness' and offered no development. Those who did offer explanation of theory often failed to illustrate the theory with any examples.

The second part of the question was not answered particularly well. Students were required to present an analysis of common law and/or statutory non-fatal offences in the context of whether justice is achieved.

With respect to the substantive aspect, a typical answer might have included analysis of:

- the lack of correspondence between the actus reus and mens rea within s.47 and s.20 offences.
- whether or not s47 and s20 offences should carry the same maximum sentence.
- the need for Parliament to consolidate/modernise all non-fatal offences within the same Act of Parliament.

Some students misinterpreted the question and offered analysis of the fatal offences. Such discussions, when relevant, could receive credit under the first aspect of the question but not the second.

## Question 10

Question 10 required students to include:

- the gross negligence manslaughter of Felix
- the offence of murder in relation to Harriet **and** her unborn child
- the defence of loss of control in connection to the murder.

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 gross negligence manslaughter of Felix who, by agreement, was travelling in the boot of Gabe's car to avoid police detection. Most students were able to identify the framework of the offence (duty, breach causing death, conduct considered so gross as to justify a criminal conviction) however, few offered sufficient development relating to the facts of the case.

When discussing duty of care strong answers used the facts of the scenario and made connections to situations where the law already recognises that a duty of care exists. Many considered the voluntary assumption of a duty (Stone and Dobinson), creation of a dangerous situation (Miller) and parties to an illegal act (Wacker), concluding that a duty of care was present. Weaker answers spent time considering a civil duty of care using Caparo which was not required whilst others incorrectly asserted that Gabe owed a duty of care to Felix because they were 'friends'.

Students were then required to outline the law on breach which may include that a person with a duty of care should act as the reasonable person would do in their position. If they fail to do so they will have breached their duty. Strong answers applied the law and discussed Gabe's failure to check on Felix's health/ wellbeing throughout the journey and offered developed arguments considering if this fell below the objective standard of care expected. Weaker answers failed to address the issue of breach or failed to identify facts within the scenario to support a breach of duty.

Causation was generally well explained and applied. Students could confidently cite the ‘but for’ test within factual causation. Most students then outlined legal causation and identified that the underlying heart condition could not be used to avoid liability (thin skull rule), concluding that Gabe’s breach of duty did cause Felix’s death.

Many answers offered strong explanation and analysis when considering whether the actions of Gabe were ‘gross’. When defining ‘grossness’ students used legal principles from *Adomako* and *Bateman*. It was pleasing to see that some students also used more recent authority to explain this element, citing *R v Rose (Honey Maria)* [2017] when considering the need for the creation of an obvious risk of death and *R v Sellu* [2016] when considering whether conduct should be considered criminal. Strong answers considered the facts of the scenario and argued that keeping a person in the boot of a car may create an obvious risk of death due to the cramped conditions and lack of proper ventilation and concluded that failing to check on a person during a three-hour long journey in hot weather was so exceptionally bad in all the circumstances as to justify a criminal conviction (*Misra and Srivastava*). Other well-reasoned conclusions were credited. Weaker answers confused ‘grossness’ with *mens rea* and so discussed intention or subjective recklessness.

Many low scoring answers identified Gabe’s criminal liability for the death of Felix as unlawful act manslaughter or murder. The facts were such that a student who took this route found it difficult to establish these offences or offer sufficient legal argument.

The second aspect related to the murder of Harriet and her unborn child. There were many excellent answers considering the law on murder. Most students were able to outline the *actus reus* (unlawful killing, reasonable person in being, Kings peace) and causation with relative ease and clear application of the facts. Most students correctly concluded that the unborn child would not be considered a reasonable person in being (*Attorney-General’s Reference (No3)*) and so there would be no liability for murder in this instance. Weaker answers incorrectly concluded that the unborn child would be a reasonable person in being, showing confused application of the legal principle. Answers were then required to explain and apply the *mens rea* for murder (*malice aforethought: express or implied*). Perceptive students used the facts of the scenario to build a strong argument to suggest that Gabe had direct intention to kill or at the least cause serious harm to Harriet, often citing their history, the argument and the fact that Gabe accelerated his car towards Harriet to support their conclusion. Weaker answers confused express and implied *malice aforethought* or offered a brief explanation of the *mens rea* without development.

The final aspect of the question required students to consider the loss of control defence in relation to the murder of Harriet. 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 and to identify relevant facts within the problem in order to construct their legal argument.

Strong answers offered 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, filming on a mobile phone and mocking comments, may have ‘constituted circumstances of an extremely grave character’. Answers which discussed whether this would cause Gabe to have ‘a justifiable sense of being seriously wronged’ presented supporting and opposing legal arguments and scored highly. The degree of tolerance test was mentioned but few answers displayed accurate knowledge of the



test. More perceptive students cited s54(3) when concluding that the short-temper is unlikely to be considered as it bears on Gabe's 'general capacity for tolerance or self-restraint'. However, weaker answers often failed to accurately address Gabe's short-temper in relation to the degree of tolerance test stating, incorrectly, that this would be a relevant characteristic adopted by the comparator.

Other common weaknesses included:

- Many answers included somewhat outdated or irrelevant case law rather than the subsections within the statute
- answers failed to address the key issues raised by the scenario. For example, few discussed the issue of revenge as an excluded matter
- A number of students failed to complete their analysis by considering the possible success of the defence.

### Question 11

Question 11 required students to include:

- the offence of assault in relation to the letter sent by Jalen to Katie
- s18 and/or s20 in relation to the deep cuts suffered by Mary
- intoxication in relation to the s18 and/or s20 offence
- the advantages of the doctrine of judicial precedent

In relation to the first aspect, many students successfully identified the framework of assault (defendant intentionally or recklessly causes the victim to apprehend immediate unlawful personal violence) and could offer legal development of the elements, however few applied all actus reus and mens rea elements to the scenario. Weaker answers failed to address the issue of 'immediacy' as the threat could not be carried out there and then and would not be carried out if Katie followed the instruction in the letter to stay away from Leon. When considering issues of mens rea students raised both intention and subjective recklessness. Well-reasoned arguments considering either form of mens rea were credited.

A number of weaker answers attempted to raise the issue of sexual infidelity in relation to the alleged affair and so incorrectly raised the defence of loss of control which would not be relevant to any offence other than murder. However, more perceptive students used this evidence to support their arguments for the presence of direct intention in relation to the assault.

A common approach for the second aspect was to deal with the actus reus of s.18 and s20 offences, then address the differences in the mens rea before concluding with possible criminal liability. Those who did this produced logical, well thought-out answers and scored highly.

When addressing s.18 and s.20 offences most students were able to outline and apply the law correctly, often suggesting that 'deep cuts' would amount to serious harm/ wounding. When addressing the mens rea, stronger answers cited Taylor and included that although an intention to merely wound is not sufficient for a s18 offence it is likely that the use of the air rifle indicated an intention to cause serious harm (s18) or some harm (s20)

Within this aspect many students spent time discussing transferred malice which was not relevant or creditworthy. This showed a misunderstanding of the concept which could usefully be addressed by centres. Application of mens rea should have suggested that Jalen had intention to cause serious harm as she travelled to what she believed was Katie's house, armed with a rifle 'intending to injure her'. This is further evidenced by the fact that Jalen 'fired the rifle at the shape'. It would

not matter that she believed the shape to be Katie but it was in fact Mary as in that moment she intended to cause/inflict harm upon the person/shape in her sights.

For clarity, transferred malice would be relevant in a situation where A shoots at B intending to kill B but misses and the bullet hit and kills C. Transferred malice can operate so that the mens rea of A (intention to kill B) can be transferred to the killing of C. In the exam scenario this does not apply as Jalen's intention was, at the time, to fire at the 'shape' she believed was a person and the actus reus was carried out against that person.

Other common weaknesses included:

- incorrect identification of the offence. Some students considered battery or raised the possibility of a s47 offence. Students who did this failed to recognise the seriousness of the injuries (deep cuts) and so were unable to score highly.

The next aspect required students to discuss the defence of intoxication. Strong answers started by outlining voluntary intoxication as seen by Jalen choosing to become intoxicated before explaining the distinction between specific and basic intent offences. Many students suggested that the defence could be raised to the specific intent, s18 offence but would only be successful if Jalen's intoxication was such as to remove mens rea. Perceptive students carefully analysed the facts and many suggested that Jalen became intoxicated in order to give her the courage to confront Katie and so she was still able to form the mens rea at the time of the attack (Gallagher). Such arguments concluded that there would be no defence. Alternative, well-reasoned arguments were also credited. Strong answers which raised the defence in relation to a s20 offence correctly explained that Jalen's intoxication amounted to recklessness which is sufficient for the mens rea of a basic intent offence (Majewski) and so once again the defence would be likely to fail.

Weak answers were often brief and not many went into much detail of the difference between specific and basic intent offences or made it clear which offence they were dealing with.

The English legal system part of question 11 required students to:

- Assess the advantages of the doctrine of judicial precedent

This aspect of the answer was generally weaker when compared to the substantive elements.

Those who completed this aspect well might have addressed issues of:

- consistency. An advantage when considering consistent judicial treatment of the law.
- predictability when advising clients. An advantage often linked to the rule of law
- the ability to avoid precedent when appropriate. An advantage when seeking to modernise the law or move away from an inappropriate precedent through distinguishing

A common, incorrect approach taken by many students was to explain the doctrine of judicial precedent rather than assess the advantages of it.

In other weaker answers it was possible that students misread the question as many offered explanations of disadvantages only.

### **Mark Ranges and Award of Grades**

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