***AQA A2 Law – Unit 3A***

Introduction

These answers all give a middle-level response to the questions. In each case comments have been inserted throughout on how to improve the response in order to get into the higher grades. In some cases there is also a higher-level response given afterwards as a comparison. Where this is not the case, a guide to what could be added for a higher-level response has been given.

Chapters 1 & 2: Murder and voluntary manslaughter

Key points to include [25 marks]

AO1 [10 marks]

* Explanation of the current law on murder plus
* Explanation of the current law on the defence of diminished responsibility and/or
* Explanation of the current law on the defence of loss of control

AO2 [15 marks]

* Criticisms of the law in each of these before 2010
* Discussion of the recent reforms under the Coroners and Justice Act 2009
* Analysis of any cases where the law has developed
* Discussion and analysis as regards what problems have been/have not been addressed by the Act (and possibly by cases such as Clinton)

*There are a great many problems, some of which have been addressed in some way. You can’t cover them all but look back at the ‘Points for an essay’ boxes in Chapters 1 and 2 to see what more you need for the A02 points.*

Middle-grade answer

Many people in the law profession have criticised the law on murder and voluntary manslaughter over the years, calling for reform of this area. One criticism is that the law on intent for murder lacks clarity, the law states the *mens rea* for murder is direct or oblique intent. Oblique intent is where death or serious injury is foreseeable or highly likely, or as one judge put it a moral certainty. Now the defendant has to appreciate that through their action this will be ‘virtually certain’. Woolin showed it is extremely difficult to prove direct intent. Actions made by the defendant are not evidence of intent, only evidence from which you can infer it. This means that there is no specific evidence for intent; the only person who can truly know the reasons behind any actions is the person themselves. Also it seems extremely tough to see exactly what outcome is ‘virtually certain’. The term virtually seems to me to be a bit ambiguous. I think this statement needs to be clarified; perhaps a test should be made to get a concrete answer to this question. The stage in which foreseeable risk becomes virtually certain I think is another point which needs to be addressed. The law commission has criticised the *mens rea* for murder but as of yet no government has suggested a way to amend the law. This shows that this is a criticism they would like to address but, *mens rea* is the hardest thing to prove in law and so the law relating to it can never be fully accurate. We cannot read the mind of the defendant and so we can only speculate as to the reasons behind any actions.

*A valid criticism but I would be clearer on the test from Nedrick (confirmed by the HL in Woollin), and acknowledge that the CA and HL in Nedrick/Woollin made some attempt to clarify the law for the reasons mentioned, that there had been too many conflicting explanations of ‘foreseeability’.*

Another common criticism is that the serious harm rule in the *Actus reus* for murder should be changed. You can have intent for murder even if you did not intent to kill. *Mens rea* is satisfied if the defendant only intended to cause serious harm. This principle was stated in DPP v Smith; that intent for murder was satisfied if the defendant intended to cause ‘really serious bodily harm’. Later in Saunders it was said the word ‘really’ did not add anything. Many law professionals think there should be a separate crime for this circumstance, it seems a little peculiar that a person can be said to have the intent for murder when they did not have the intention to kill. Perhaps a lesser sentence than that for murder is required. Although this principle has been highly criticised, it has been developed through many cases, following DPP v Smith and Saunders came Nedrick and Woolin. These introduced the two stage test for looking for intent. Neither looked at changing or even getting rid of the serious harm principle.

*Another valid criticism, with good use of cases, though a little repetitive.*

One of the most controversial and widely discussed areas of murder not only in the law profession but in the general public is the circumstance of mercy killing. A positive act that ends a person’s life is technically murder, and therefore mercy killing is murder as well. Although a failure to act is an omission and therefore not murder. For example discontinuing medical treatment will not be classed as murder. This means that you cannot make a positive act too, for example, end a person’s suffering, but you can stop any medical treatment so that they die. Two cases that illustrate this principle are Airedale NHS Trust v Bland which stated that you cannot be guilty of murder though an omission, in relation to mercy killings. But in the case of Cox the doctor that gave an injection to kill a long suffering patient was guilty of murder. A lot of people think that there are circumstances in that the quality of life is so bad that that person is suffering too much to be alive. It is possible that death for a person in this kind of pain is the better option. I don’t think it is morally justified to let someone suffer in pain. A bill was introduced in 2005 to allow assisted suicide in certain circumstances. This followed the Bland case that went to the House of Lords, without a court order this case outcome would have been murder.

*There are some good points made here but more use could have been made of the many recent cases in this area, which continues to be controversial*

The law on murder is common law and not written down in any statute which is one criticism but on the other hand it makes it easier to change and develop through case law.

*A good point and it is worth noting that a criticism of the law should include good points as well as bad. A well-balanced argument will always gain higher marks.*

There are also questions raised when considering sentencing for murder. Every person convicted of murder will be served with a mandatory life sentence as a minimum sentence. Many people do think that in our current system there has to be a mandatory system in place. But, there should be more judicial creativity and discretion in place when considering the circumstances in which the crime was committed. Perhaps this would be easier if, like in America, there were different degrees of murder. And then a mandatory sentence was made for the individual degrees. In May 2005, the DPP, Ken Macdonald, recommended that a more flexible system should be put in place. Similar to that of the one they employ in America, where there are different ways of homicide. If this was applied not all killings would be treated in the same way.

*Again this is a fair criticism but would be improved with reference to the Law Commission recommendations to balance it as these would address this point.*

Not only is the law on murder widely criticised but the law on the defences available to the defendant also have questions raised against them.

Firstly the defence of diminished responsibility; it is sometimes the case that the outcome depends on the moral aspects of the crime. Meaning that some diminished responsibility defences will fail if the crime is thought of to be morally wrong. Examples can be seen in cases of ‘mercy killings’. A jury may accept a plea of diminished responsibility even where there is little evidence for it, as in Bailey 2002.

One reason is sympathy for the accused and the other reason is the mandatory life sentence. If the defence fails the sentence will be life for murder. Thus, accepting the defence means that a discretionary sentence can be given, taking into account the circumstances. To most people a life sentence for a person who commits a mercy killing is not right but whilst this may ‘do justice’ in a particular case, it is arguably stretching the law to fit the facts. This scenario also works in the opposite way, in Sutcliffe 1981, or the Yorkshire ripper case, the defence were not successful in a plea of diminished responsibility even though there was substantial medical evidence that the defence could have been accepted.

*This is a well-reasoned argument with good use of relevant cases. The problem is that there is no introduction to it (a brief explanation of the elements of the defence is needed) and no mention of the Coroners and Justice Act 2009. The question starts with ‘Despite some recent reforms’ so these need to be explained before going on to the remaining problems.*

With regards to the law on the defence of loss of control, it is clear that this, like diminished responsibility, is problematic. In 2003 the Law Commissions stated that the defects of this defence are unable to cure through judicial development of the law. The major question levelled at loss of control surrounds the objective reasonable man test. Now that there are so many characteristics of the defendant added to the reasonable man, like age and sex, then we are making the test a subjective one. This is not the point of having a reasonable man test. There is a danger of adding so many characteristics that we in fact make the reasonable man the defendant. The Law Commissions stated that the HL in the case of Smith left the law confused and left little clarity, if this makes the law profession confused that what hope does a jury have when deciding if the reasonable man would have lost control. But, this was somewhat addressed in the case of AG v Holley where is was stated that the mental state of the defendant would not be attributed to the reasonable man.

*Again, the candidate would enhance these arguments if reference was made to recent changes which have clarified the law on this point. The Act puts Holley into statutory form thus suggesting Smith was wrong, so it can be said the law had improved here. Discussion of the reforms is important as it is specifically part of the question.*

**Overall this is a middle-range answer. The coverage of murder is good but too long has been spent on the points raised for this and too little time left for voluntary manslaughter and reforms. The question specifically asks for the problems and reforms of voluntary manslaughter as well so these need to be dealt with in more detail, especially loss of control (see below for guidance). Reference to the Coroners and Justice Act 2009 and the problems both addressed by it and introduced by it, with some more recent cases, will get this into the higher-grades.**

Other points to discuss for a higher grade

* Sexual infidelity is excluded but is often a ‘trigger’ for a loss of self-control
* The requirement for the loss of self-control to be sudden has been removed and arguably this is an improvement
* There is still a need for loss of control however, so cases such as Thornton could still fail on this
* The Law Commission had recommended abolishing the need for a loss of control
* Changes to the defence were supposed to make it easier for women to rely on it

Chapter 4: Offences against the person

Key points to include [25 marks]

A01 [10 marks]

* In relation to Henry and Jack: explanation of assault (battery) occasioning ABH (**s** **47**)
* Cases such as Thomas, Savage, Chan-Fook in support
* In relation to Jack and Karim: explanation of unlawful and malicious wounding (**s** **20**) and unlawful and malicious wounding with intent (**s 18**)
* Cases such as Eisenhower, Saunders, Parmenter, Mowatt in support
* The issue of transferred malice using latimer in support
* In relation to Henry and Jack: explanation of the defence of consent. The normal rule in relation to consent if injury is caused and the exception for ‘rough horseplay’

A02 [15 marks]

* In relation to Henry and Jack: application of assault (battery) occasioning ABH (**s 47**)
* In relation to Jack and Karim: application of unlawful and malicious wounding (**s 20**) and unlawful and malicious wounding with intent (**s 18**)
* A sustainable conclusion as to the offences
* In relation to Henry and Jack: application of the defence of consent.
* A sustainable conclusion as to Henry’s acts being within, and Jack’s outside, any implied consent

Middle-grade answer

Henry struck Jack, and this suggests to me that the injuries could amount to assault occasioning actual bodily harm under s47 of the Offences against the persons act 1861.

For ABH there must be a prior assault or battery, as confirmed in Savage. There was a battery because Henry used the unlawful application of force. The battery must cause the harm. It is clear that Henry’s actions of punching Jack in the face directly caused the harm. Chan Fook suggests that harm must be more than trivial and this seems to be the case.

*The candidate picks up on the relevant offence and explains the law accurately. Little reference is made to the facts of the scenario, however. This is a weakness because it indicates that the candidate can explain the law but not apply it, as required for A02.*

For *mens rea* Henry only needs intention or recklessness for the battery. There is no need for him to intent or foresee the actual bodily harm. It seems clear that in a boxing match there is at least intent to apply force

*This is accurately stated and better reference is made to the facts, but there is no case in support*

The cut to Karim may be s20 or s18 of grievous bodily harm or wounding. The *actus reus* is there because there is a wound, a break in the continuity of the skin (Eisenhower). In Eisenhower a boy shot another boy with a shotgun and a pellet went in his eye. The court held that this was not a wound as it was only an internal injury.

*There is brief explanation and application but the candidate does not fully develop the points made. Eisenhower is the correct case to use in support but the facts are not needed in detail s there was no wound in that case but there is here.*

Whether the offence comes under s20 or s18 depends on *mens rea*. The *mens rea* for s20 is intent or subjective recklessness to cause harm. Henry must have intended to cause some harm, or recognised the risk of some harm and gone ahead anyway.

For s18 it must be shown that Jack intended to cause serious harm which is harder to prove. This was confirmed in Parmenter. It must be Jack’s purpose to cause serious harm or he appreciated serious harm was a virtual certainty.

I think Jack possessed the *mens rea* for the s20 offence, the jury will have to decide.

*There is an accurate but not fully explained reference to mens rea for s 20, and an accurate explanation for s 18 mens rea. However, there is again too little application by reference to the given facts and little development of the points made. Reference to the fact that the jury will have to decide is acceptable but a candidate should at least attempt a conclusion as to what that decision is likely to be.*

Henry may use the defence of consent. In AG’s Reference No 6, the judge said it was not in the public interest for people to cause each other harm for no good reason. This may be the case here. Having said this though, the activities may be considered to be ‘rough horseplay’ as in Aitkin and so Henry may have a successful plea of consent.

*The main point of the defence is stated but not fully developed and no reference is made to Jack using the defence. The question said ‘Consider the liability of Henry for the injuries to Jack, and the liability of Jack for the injuries to Karim’ so the defence for Jack’s offence against Karim is needed as well (see Script 1).*

**Overall this is a mid-level response. It is reasonably accurate and there are some relevant cases but there is too little application of the law to the specific facts. The definitions are largely accurate but not complete as regards s 18 and s 20 and not always fully developed.**

Higher-grade answer

The first offence in this scenario, when Henry struck Jack, suggests to me that the injuries suffered could amount to assault occasioning actual bodily harm under s47 of the Offences against the persons act 1861. The severity of the injuries in this scenario may come into question in this case, it will have to be discussed in court whether the red marks and swollen eye are enough to amount to actual bodily harm. If this is not the case then the offence may be lowered to the common law offence of battery.

There are three parts to the *actus reus* of this offence and the first is assault, the original conduct which was Henry punching Jack in the face twice (a battery). For ABH there must always be a prior assault or battery, this was discussed and confirmed in Savage where a woman attempted to throw beer in a person’s face let go of her glass and subsequently cut the victim. This part of the *actus reus* is simple in this case, it is clear the there was a battery when Henry punched Jack. He committed the battery when he used the unlawful application of force (which can be slight as in Thomas where touching clothes was enough), thus meaning that the first stage of the *actus reus* is complete. Next it must be shown that the original battery occasioned (caused) the result. This is because s47 ABH is a result crime and so there must be no break in the chain of causation, Henry’s actions must have made a significant contribution to the eventual harm. This does not seem to be in doubt in this scenario as there were no actions of Jack that could possibly break the chain of causation (Roberts). There were no acts of a third party that could have possibly broken the chain of causation either (Smith). It is relatively clear in this scenario that Henry’s actions of punching Jack in the face caused the injury suffered. The last part for the *actus reus*, and perhaps the hardest to prove in this scenario, is that there was in fact actual bodily harm. Miller stated that this was any hurt or injury calculated to interfere with the health and comfort of a person. Chan Fook then extended this to include serious psychiatric injury. But, the problem in this case is that the injury suffered may not be classed as more that a scratch or a bruise and so the Joint Charging Standards may only class this as a battery. But, if the injuries are deemed to be severe enough then there is still a case against Henry for ABH.

*The candidate picks up nicely on the relevant offence and explains the law accurately. Good reference is made to the facts of the scenario. A little too much time was wasted on causation which is not an issue here. Although this won’t lose marks it is using up valuable time. Also there is no need to mention psychiatric harm, Chan-Fook would be better used to say harm must be more than trivial. Reference to the Joint Charging Standards is unnecessary as AQA specifically say this is not a legal standard so should not be used.*

For the *mens rea* of this offence, Henry must only possess the intention, or was reckless as too, the assault or battery - Savage. There is no need for him to intent or foresee the actual bodily harm. This means that if the defendant (Henry) has the *mens rea* for the assault/battery and harm occurs then it can amount to the more serious charge under s47. Roberts sets out the principles in which we follow for the *mens rea* of this offence, and it can be incurred in one of three ways; direct intent (causing fear or application of force was D’s purpose), indirect intent (fear or application of force is virtually certain) and finally through subjective recklessness (D aware of risk of fear/force, does so anyway). It seems clear that by wearing boxing gloves and by organising a boxing match it seems clear Henry would possess the *mens rea* for the original battery because that was the purpose of the situation, his intention was to apply unlawful force.

*The conclusion is accurate but there is no need to go into detail of all three types of mens rea because there is clear intent to apply force – as accurately stated in the last sentence. Also Roberts did not set out the mens rea as the candidate states but this is a minor error.*

When Jack lashed out and eventually cut Karim with a knife he may have committed the s20 or s18 offence of grievous bodily harm or wounding.

The *actus reus* of the s20 and s18 offence is relatively the same. First of all in Smith the word ‘grievous’ was deemed to mean the same thing as ‘really serious’, and then later in Saunders the word ‘really’ was said to add nothing and should be disregarded. So, GBH in fact means serious bodily harm. This can include many number of injuries like badly broken bones, injuries that require lengthy treatment or result in a loss of blood and even psychiatric injury can come under GBH. In this scenario the injury suffered, a deep cut that required a large number of stitches, does seem to fit the criteria for the *actus reus* for GBH, and perhaps more specifically for wounding. For a wound to have been inflicted there must be a break in the continuity of the skin, all seven layer of the skin must be broken for the injury to be classed as a wound (Eisenhower). It is clear that in this scenario Jack has caused Karim to suffer a wound and therefore the *actus reus* for GBH should be quite clear in court. But, whether the offence is one of s20 or s18 is a matter of *mens rea*.

*Again there is accurate explanation and application but the candidate needs to keep to the point (there is clearly a wound so GBH does not need discussing) or they may get short of time*

The *mens rea* for the s20 offence of GBH as intent or subjective recklessness. But, it is not necessary for the court to show that the defendant foresaw that serious harm would occur, but only that some harm might. This point was confirmed in Mowatt. So, for Henry to have committed the GBH offence of s20 he must have either intended to cause some harm, know that some harm was virtually certain, or recognise the risk of some harm and proceed anyway.

The *mens rea* for the s20 offence contrasts greatly to the *mens rea* required for the more serious offence of s18 GBH. For the s18 it must be shown that Jack intended to inflict serious harm. So, the only way in which Jack could have committed this offence was if he specifically intended to cause the wound on Karim. This point for the *mens rea* for s18 was confirmed in Parmenter. The intent can either be direct or indirect, where the first requires Jack’s purpose to be that he causes GBH and the second to be that he appreciated GBH was a virtual certainty.

I think that it is most likely that Jack only had the *mens rea* for the s20 offence, but the use of the knife may suggest his actions warrant the more serious s18 as it indicates he at least saw serious harm as a virtual certainty.

*Again it would be better to discuss wounding not GBH but the point on MR is correct and is the same for both. The explanation of the law is accurate but the application a little weaker. The conclusion is good with reference to the knife suggesting s 18 is possible. However to get a sound answer the doctrine of transferred malice is needed (Latimer). He may not have intended or been reckless as regards causing any harm to Karim, but he lashed out at Jack so the mens rea for this can be transferred to Karim.*

Henry may have the defence of consent available to him. If this defence is successful, then it would make any force applied lawful and there would not be a criminal act.

Although, there are limits to this defence with regards to how far a person is free to consent to being harmed. In this case the courts will consider whether Jack should be allowed to consent to the possible ABH that has been caused by Henry. The degree of harm and the nature of that harm will be considered by the courts.

*This is correct but a case in support is needed.*

The case of AG’s Reference (no 6 of 1980) shares some similarities with this scenario, in that both involve a fight of some sort and one party involved suffered injury. In the AG’s Reference, the judge stated that it was not in the public interest that individuals should cause each other actual bodily harm for no good reason. This may have implication in this case as it shares extremely similar facts, Henry may not be successful in his defence of consent because it is not in the public’s interest to allow cases that involve fights to be consented to. The defence was not allowed in Brown as the injuries suffered were said to be too extreme, even though it was consented to and done within the privacy of their home it is not clear here whether the injury is severe enough for the defence to fail.

*The candidate states and applies the law well here, using relevant cases in support.*

Anyway, it may be possible for Henry to have a successful plea of consent because the activities may be considered to be ‘rough horseplay’. It is common that such things as ‘manly sport’ and ‘manly diversions’ are considered to be exceptions to the rule that you cannot consent to injury, but the question arises whether how far this includes these activities that are arguably not sport. Two cases to illustrate this point in law are Aitkin and Jones. The first one, where a group of boys threw two others 10 feet in the air, causing a broken spleen and a broken arm. This was considered to be rough horseplay and the defence of consent was allowed. This was again true in the case of Aitkin where some drunken RAF officers poured white spirit on a colleague and set fire to him. Again this was stated by the courts to be rough horseplay and the defence of consent was successful. This looks promising for Henry because the nature of the injuries and the danger involved in these two examples are much greater by far. So, the organised boxing match that they arranged may be a clear cut case of rough horseplay therefore excluding criminal liability for Henry when he punched Jack in the face.

*This is excellent. The application of the law to the given facts is clear and the candidate uses relevant cases in support. A minor point, it is better to avoid words like ‘clear cut’ as cases show that the law is very rarely clear cut.*

Henry’s defence of consent really depends on two points, whether or not the courts will allow Jack to consent to anything above ABH, which AG’s Reference (no 6 1980) suggested it would not. However the courts may consider that the activities undertaken were nothing more than rough horseplay, and if this is the case the defence may be successful if you compare it to previous cases in that area.

As for Jack using the defence this is more difficult as there was serious injury. As said above in Brown the defence was not allowed as the injuries suffered were said to be too extreme and the use of a knife brings it outside the rough horseplay exceptions. It would seem that even if Henry has consented to boxing he has not consented to harm and Karim has not consented to anything as he is merely a spectator. For Jack the defence is likely to fail.

*A good conclusion bringing together the main two issues on consent.*

**Overall this is a good higher-grade response. The candidate identifies the relevant offences, is generally accurate in the explanation of the law and goes on to explain and apply the law using appropriate cases in support, with impressive reference to the given facts.**

Chapter 5: Defences

The candidate in this example has chosen the two defences of insanity and automatism.

Key points to include [25 marks]

A01 [10 marks]

* Explanation of the law on insanity
* Case examples of how the law applies in practice
* Explanation of the law on automatism
* Case examples of how the law applies

A02 [15 marks]

* Analysis of the law on insanity with reference to problematic cases
* Analysis of the law on automatism with reference to problematic cases
* Discussion of reform proposals for one of these two defences

*There many problems with these defences and you can’t cover them all, but look back at the ‘key points for an essay’ in Chapter 5 to see what else you can discuss for A02.*

Middle-grade answer

With regard to the defences of insanity and automatism many people have criticised the law, so there are clearly problems. One problem with the defence of insanity is the stigma attached to it as a successful plea of insanity shows someone as insane. This includes a person who suffers from such things as epilepsy as in the case of Sullivan where the defence was held to be insanity but he reacted during an epileptic fit. In Hennessey a man who suffered from diabetes had failed to take his insulin and was held to be insane. Also in Burgess a person who was sleepwalking was held to have a disease of the mind. A person should not be labelled with the term ‘insane’, in such cases.

*Who are ‘many people’? To improve this introduction there should be a brief explanation of the rules on insanity and instead of ‘many people’ reference should be made to the Law Commission preferably with some reference to their most recent scoping paper in 2012. The case examples are good but could be a little better developed.*

The rules on insanity come from a case in 1843, it should be updated to take account of changes in medical knowledge. Parliament should reform this defence and not judges.

*Again had there been a brief explanation in the introduction then reference could be made here to the words ‘defect of reason’ and ‘disease of the mind’ A good point is made regarding Parliament being the most appropriate way of reform but this is not developed to show why (Parliament is elected, can consult with the electorate)*

Automatism is also problematic. In Hennessey above the failure to take insulin was an internal factor, but in Quick failing to eat meant it was automatism and this seems a fine line between two similar cases but Quick was acquitted.

*Comparing cases is a good way to illustrate the problems and how they affect the outcome of a case, but this could be better developed.*

Another related problem is the overlap between automatism and insanity. Similar cases have different results and this is not justice. The external v internal factor issue is producing unfair results as seen in Quick and Hennessey. Also the effect of the defence being successful is very different, either being found insane or acquitted.

The Law Commissions have recommended reform of the defence of insanity to take account of medical advances and to modernise the law. A consultation has been started to get people’s views on the defence and the problems with it and this may help.

*The arguments are concise but clear and there are some useful cases in support, with the emphasis on the relevant issue and not overladen with unnecessary facts. However, while too much factual detail is unnecessary, the candidate does not expand sufficiently on the points of law and the problems raised by these.*

*It would be improved with more reference to the proposed reforms (this is specifically required by the question for one of the two chosen defences), perhaps with some dates and/or quotes from the Law Commission, and with greater development of the problems identified and cases used. Also the candidate is being asked to evaluate two defences so there should be a little more on automatism which is only briefly mentioned in relation to insanity. An explanation of this defence with reference to its own problems and then a comparison between the two could bring this into the higher grades.*

Other points to discuss for a higher grade

* The overlap with diminished responsibility
* The burden of proof being on the defendant
* The concepts of ‘defect of reason’ and ‘disease of the mind’ being difficult for a jury with no medical knowledge.
* The earlier proposals for reform (Butler Committee, Draft Code) which have not been implemented
* The improvement regarding the possible orders in the 1991 Act so that now the judge has greater discretion except in murder cases (to give a hospitalisation order, supervision order, guardian order, or a complete acquittal).
* The defence of automatism requires a total loss of control which is quite restrictive
* That self-induce automatism is not acceptable (while this seems right when it is by drink or drugs it could be that failing to eat after taking insulin is seen as self-induced)
* There is too great an overlap between insanity and automatism and the law needs to be more clearly defined for each defence