## Basic Set Up of the Exam

<table>
<thead>
<tr>
<th>Time:</th>
<th>1 ½ hours</th>
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<tbody>
<tr>
<td><strong>Question One:</strong></td>
<td>Synopsis of one of the eight cases in the booklet</td>
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</tbody>
</table>
| | • What did it decide?  
| | • How far does this confirm existing law?  
| | • How far has the law developed since?  
| | • Link to at least one other case and the sources! |
| **Question Two:** | One essay based on a quote from one of the sources, critically evaluating that area of the law  
| | **Save this question for last!** |
| | • Put the quote into context  
| | • Define and evaluate the development of the area.  
| | • Law reform  
| | • Produce a balanced argument.  
| | • Link to sources! |
| **Question Three:** | Three problem questions which require application of the law to the scenario, explanation and conclusion. |
| | • Locate the definitions in the sources  
| | • 3 critical points in each problem and a relevant case  
| | • Conclude |
1. Where will you find the definition of automatism?

2. Which source[s] talk about the problems of the reforms to insanity?

3. Where will you find reference to distinguishing?

4. Identify two problems with the current law on automatism, using the sources.

5. Where will you find reference to the role of the judge in insane and non-insane automatism?

6. Name one case from the sources which follows an earlier precedent

7. Name one case which created new precedent.

8. Which source discusses the problem of the numbers pleading insanity?

9. Where will you find the facts of Burgess?

10. Where will you find the problem of the different burdens of proof for insanity and automatism?

1. Where will you find the key case on insanity being discussed?

2. Identify two sources which discuss the meaning of ‘disease of the mind’?

3. Which sources discusses reform to the current law on insanity?

4. Where will you find the facts of T?

5. Where will you find the reason providing insanity as a defence to those with a mental disorder?

6. Where will you find reference to the role of the jury in insanity and automatism?

7. Name one case from the sources which reverses the decision of the lower court.

8. Which two sources mention the case of Kemp?

9. Which source[s] discuss the problem of ‘external factors’?

10. Identify two problems with the current law on non-insane automatism.
For each of the cases below, write in the facts, ratio and area (Insanity or Automatism)
Then, highlight the current cases only (so you are clear on what’s good law now!)

<table>
<thead>
<tr>
<th>Case</th>
<th>Facts</th>
<th>Ratio</th>
<th>Area?</th>
<th>Case</th>
<th>Facts</th>
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<th>Area?</th>
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<tbody>
<tr>
<td>1. M’Naughten</td>
<td></td>
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<td>17. Hadfield</td>
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<td>2. Bratty v AG for Northern Ireland</td>
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<td>18. Lipman</td>
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<td>4. Burgess</td>
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<td>20. Hardie</td>
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<tr>
<td>5. Quick</td>
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<td>21. Lowe</td>
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<td>7. Sullivan</td>
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<td>23. AG’s Ref No 2 of 1992</td>
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<td>Case</td>
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<td>8. T</td>
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<td>24. DPP v Harper</td>
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<td>9. Clarke</td>
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<td>25. Thomas</td>
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<td>11. Johnson</td>
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<td>27. Parks</td>
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<td>13. Codere</td>
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<td>29. Broome v Perkins</td>
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<td>15. Woolmington v DPP</td>
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<td>31. Sutcliffe</td>
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<td>16. Whoolley</td>
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<td>32. AGs Ref no 3 of 1998</td>
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Source 1: Extract adapted from the judgement of Lawton LJ in R v Quick [1973] QB 910

This source comes from the Court of Appeal and focuses on what is included in the phrase ‘disease of the mind’. Lord Lawton argues that the court should look at the cause of the condition and that if it is an external cause, then D may have the defence of automatism open to him. He also refers to a list of causes he thinks may help to promote a defence of automatism, and seems to confirm that automatism is not easy to argue, pointing out that if it is self induced it will be no defence. Lawton also focuses on the medical origins of Quick’s condition, and implies that its treatment is out of line with the disposal for those found NGRI.


This source comes from a textbook discussing the problems associated with the pleading of insanity. He begins by pointing out how few people plead insanity compared to those with a mental disorder, and suggests that this might show that the current law is ineffective. He also discusses the origins of the plea, and points out that one of the issues is that the defence is used to protect society, and focus on the legal definitions not medical ones. Finally, he discusses the problems of M’Naughten as precedent, and argues that even if it was not precedent when it was presented, the way it has been treated by the courts since means that it is as good as a statute in reality. In addition he also points out the reason for having a defence of insanity in the first place – to prevent from punishing those who are not able to accept true responsibility for their actions.

Source 3: Extract adapted from the judgment of Lord Lane CJ in Burgess [1991] 2 QB 92

This judgement from the Court of Appeal focuses on whether sleepwalking is classed as insane or non-insane automatism. Lord Lane summarises the role of the judge in deciding whether D can argue either defence to a jury. He considers whether the failure to control implied by sleepwalking is enough for a disease of the mind. In considering this he does say that the recurring danger theory is helpful, albeit not absolute as here there was no evidence that D definitely would perform the same act again. In deciding that sleepwalking was caused by an internal factor and thus a disease of the mind, he is distinguishing from Bratty. He confirms that the phrase ‘disease of the mind’ is a legal construct, and so up to the judges to interpret, although they need medical evidence to support their findings.

This source comes from a textbook and focuses on the recent disposal reforms to the law on insanity. They point the role of the jury in delivering the special verdict, rather than one of not guilty, and discuss the problems of this prior to 1991. The authors point out the problems with this approach and the label ‘insane’ for D, arguing that many D preferred to plead guilty where they were not really responsible for their actions to avoid either the label or the outcome. They also summarise the changes under the law in 1991 and 2004, arguing that the discretion now given to the judge is a good thing. Finally, they point out that all these changes still don’t tackle the issue with the defence and the label insane.

Source 5: Extract adapted from the judgement of Lord Denning in *Bratty v Attorney General for Northern Ireland* [1963] AC 386 HL

This extract from the decision of the House of Lords, focuses on the meaning of non-insane automatism and its justification in the law. Lord Denning starts by pointing out that criminal liability normally requires a voluntary actus reus which is what is missing in an automatistic act. He also confirms that D should have a defence in such a situation, providing a definition of automatism. However, he points out that there is little case law in this area and so its actual use as a defence will be very limited. Finally, he points out the difference in the burdens of proof between a defendant pleading insanity and one pleading automatism.

Source 6: Extract adapted from *Criminal Law*, Alan Reed and Ben Fitzpatrick, 4th Edition 2009

This source focuses on the problems of automatism in the law and begins by outlining the process the judge uses to decide whether D can present a mental disorder defence, and if so which one (very useful for problem questions!). They confirm that the internal/external theory is used to decide which type of automatism it is and point out that the prosecution has a hard job disproving automatism once it is raised. They also explore the key problems with automatism, focusing on the problems of the diabetic defendant and the sleep walker, pointing out that the distinction between internal and external causes seems really unfair (“cheese sandwich”). Finally they use the case of T to point out that in some cases, what starts as an external cause (rape) will eventually end up as an internal one (PTSD) and the problems that will bring with using the internal/external theory.
What Could Show Up & How to Answer

All of this is in addition to the information we covered at the start of this term on the powerpoint!

Question One:

This is assessed for AO2 and worth 12 marks (+4 AO3 marks). This means that you should spend about 15 minutes on it. This will be based on one of the cases mentioned in the sources, and ask you to consider how it develops the law. There is a lot of detail on them in the sources

This means you will need to know what each case in the sources decides, and another case to show how it extends the law on the specified area and/or where it comes from.

These cases are:

- R v Quick 1973 QB 910
- R v Sullivan 1984 AC 156
- R v Hennessy 1989 1 WLR 287
- M’Naughten 1843 All ER 229
- R v Burgess 1991 2 QB 92
- Bratty v Attorney-General for Northern Ireland 1963 AC 286 HL
- R v Kemp 1957 1 QB 399
- R v T 1990 Crim LR 256

It is focusing on precedent really (and thus bringing in part of AS Law). It will ask you to consider “the ways which...” or the “extent to which...” or “evaluate the fairness of...”

Essentially, you need to say:
- What the critical point of law from the case is (using the source) and why
- How far it confirms the prior law
- How far it changes the law (with reference to at least one other case).
- Answer the question using the command word e.g. ‘significance, importance’ etc.

Example Question

“Explain the significance to the law on attempts of the case of R v Sullivan [Source 2, line 15]”

Examiner’s Tip: Aim to explain three critical points about the case in question, and relating it to a significant case. There aren’t any marks for describing the facts of the case alone!

It is important to note that no credit will be given for merely describing the narrative of the case; some sort of evaluative point must be made in order to achieve marks

Some sample Questions....

1. Briefly explain the importance of R v Quick to the development of the law of automatism
2. Examine whether the precedent in R v Kemp lead to justice or injustice.
3. Discuss the extent to which the precedent in R v Burgess represents a development in the law on insanity
4. Discuss the ways in which M’Naughten developed the law on insanity.
This is the **BIG** question, and is quite broad in its scope. It is worth 34 marks, which are split between AO1 and AO2. You should aim to spend about 40 minutes on it. You will be given a quote from one of the sources, and asked to do an extended critical comment on the area of the law. This focuses on the limits of the law, and current developments. It should be balanced and reasoned. Really you are looking at whether the development of the law has been reasoned and consistent, or subject to change.

**This means that you need to also know the law beyond the sources**

You **must** use the sources and should spend the first 5-10 minutes of answering to annotate the sources, and pick out relevant points. You need to understand exactly what each source is arguing – do they agree? Do they disagree? What **precisely** is their argument and how far does this fit with the current approach of the law. You don’t need to write them out, just refer to the **source number** and the **line number** e.g. source X, line XX. (Vague mentions of the source will attract no marks!)

You should treat this as a 50 mark essay question.

It will be a question on insanity and/or automatism, and will use a quotation from one of the sources as a start. You should start your response by putting this quote into context: what is the source arguing? Why are they arguing it?

You will need to look at what the law under the **M’Naughten** and/or **Bratty** is, and the difficulties that the judges have had in clarifying and interpreting this law.

You will need to use a range of quotes from the source, and add your own knowledge to the 8 cases in the source (in other words look to use about 15+ cases)

**Example Question**

In Source 2, line 17 the author states that “the definition of insanity... is a legal, not a medical one.”

Discuss how accurately the statement above reflects the interpretation of the law on insanity by the courts [34]

**Examiner’s Tips:**

- **Focus on balance and reason** in your answer, and make sure to identify the point of the question in your introduction

- Vague references to the source will gain **no credit** – simply extracting the information without applying it to their own discussion will gain **limited credit**

- It requires high level analysis of the discussion indicated in the question. The quote from a source is there to help candidates identify the **theme** of the discussion

- Candidates should aim to maximise the AO2 mark – e.g. the law on insanity and automatism is based on the M’Naghten Rules 1843 and subsequent common law decisions. However, judges have had difficulty clarifying the definitions and have, at times, confused policy with the true interpretation of the defences and that understood by the medical profession.
### Potential Question Two Titles:

Discuss the argument that with relation to insanity (or automatism) “the distinction [between insanity and automatism] is by no means easy to draw” [Source 3, line 16-17]

<table>
<thead>
<tr>
<th>“No act is punishable if it is done involuntarily.” [Source 5, Line 4]</th>
<th>Discuss how far this statement accurately reflects the approach of the courts to the law on automatism.</th>
</tr>
</thead>
<tbody>
<tr>
<td>“[The] approach to automatism is not without its problems... it leads to unreal distinctions being draw.” [Source 6, lines 14-15]</td>
<td>Analyse the extent to which this statement accurately reflects the development of the law on insanity and automatism.</td>
</tr>
<tr>
<td>According to Lord Lane, insanity is “a legal problem to be decided on legal principles” [Source 2, line 35]</td>
<td>Discuss how far this statement reflects the development of the law on insanity</td>
</tr>
<tr>
<td>In Source 4 the authors argue that “neither the 1991 Act not the 2004 Act tackle the definition of insanity and so the stigma of being labelled insane remains.”[Source 4, Line 24-25]</td>
<td>Analyse the extent to which this reflects the development of the law on insanity.</td>
</tr>
<tr>
<td>“Tindal CJ [in M’Naughten] seems to have striven to state the law so that an accused would not be blamed for what he had done through lack of intelligence or reasoning power or the ability to foresee consequences where punishment would deter neither the accused no others.” [Source 5, lines 31-33]</td>
<td>Evaluate how accurately this statement reflects the development of insanity by the courts</td>
</tr>
<tr>
<td>In Source 2, Jefferson argues that “Despite the criticism that the [M’Naughten] rules should not be read like a statute, the words have been used as if they were...” [Source 2, lines 35]</td>
<td>Discuss how accurately the above statement reflects how judges have developed the law on insanity.</td>
</tr>
<tr>
<td>According to Lord Denning, “the category of involuntary acts [which provide a defence] is very limited” [Source 5, line10]</td>
<td>Discuss how far this approach has limited the use of automatism as a defence in the criminal law</td>
</tr>
<tr>
<td>The author states that “In the defence of insanity ... the accused was insane at the time of the offence but is fit to plead at the time of the trial. It is not often raised today”. Source 2 lines 1-2</td>
<td>Examine how far this reflects the development of the law on insanity</td>
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</tbody>
</table>
This will consist of three short problem questions to which you need to identify the relevant aspects of law, and then apply it to the situation. They are very straightforward! It should take you about 30 minutes to answer. They are worth 30 marks and this is divided up into 10 marks for A01 and 20 for A02

Essentially, they are an extended version of the section C questions on G153

Remember that most of the relevant definitions will be the sources

Example Question

You are reminded of the importance of including relevant knowledge from all areas of your course, where appropriate, including the English Legal System.

In answering questions use the source materials and your knowledge of the subject.

3 Consider whether a defence of insanity or automatism is most likely in each of the following situations:

(a) Samia sets off on a long journey to visit relatives. She has been driving her car on the motorway for several hours when she hits another car which has broken down on the side of the road. The driver of the other car, William, is injured in the crash breaking his arm. Samia says she cannot remember crashing into the car as she was in a ‘trance-like’ state. (10)

(b) Molly is sitting outside a café eating her lunch. She is disturbed by a wasp which flies around her making her panic. Quickly, in an attempt to get rid of the wasp, Molly tries to hit it with her hand. Instead, she hits another customer, Pablo, in the face causing a bruise to his cheek. (10)

(c) Sylvia has been diagnosed with diabetes. She has been told by her doctor that she must inject herself twice a day with insulin to control her condition. One day she does not take her insulin. Later that afternoon she takes a purse and a mobile telephone belonging to her colleague, Dalvinder. Sylvia cannot remember anything about the events which occurred that afternoon. (10)

Examiner’s Tips: You should be able to identify at least three points of application plus a case for each high for marks.

e.g. D may be able to argue automatism as by taking the medication his condition is caused by an external factor which is sufficient as confirmed by Quick (Source 1, Line 21)

For the three scenarios in question 3 candidates should:

• structure their answer logically, apply the law sensibly to the facts
• identify for each individual aspect of the problem the key facts on which resolution of the problem is based
• define the appropriate law accurately; and then apply the law sensibly to the facts.
• reach sensible conclusions based on their application of the law
• use specific relevant Act sections or cases to support their definitions of the law (eg the M’Naghten Rules 1843 and the common law interpretations of this section;)
• Remember that they are dealing with small individual problem scenarios rather than a large problem, as is the case in the option papers, and therefore the structure is almost created by the question
• Within their answer, in order to reach Level 5, discuss the relevant critical point(s), include at least one relevant case and provide sensible conclusions based on their application of the law stating what they think the most likely outcome would be for each scenario.
Discuss whether a defence of insanity or automatism is possible in each of the following situations:

(a) James thinks that all people with blue auras pose a threat to national security. He sees Sam walking past, who has a blue aura and stabs him in the back.

(b) Louis is very nervous about driving. To help him out, David hypnotises him. Whilst driving the car later, Louis becomes more and more reckless and causes a five car pile up through his driving. When questioned about it later, he can’t remember anything.

(c) Steven has been out drinking with Jon. Later that night, Jon awakes to find Steven attacking him with a metal bar. Steven has a history of sleepwalking and cannot remember attacking Jon.

Discuss whether a defence of insanity or automatism is possible in each of the following situations:

(a) Valentino is dumped by his girlfriend Amy, and is very depressed about it. His mum, not wanting to see him so down, tells him to take her anti-depressants. However, Valentino, who has never taken them before, reacts badly and becomes delusional, thinking his mum is a serpent sent to kill him, and stabs her.

(b) Dalvinder is cutting bread in his kitchen one morning. However, unknown to him, he has actually cut his girlfriend Larissa’s neck.

(c) Serephania suffers from diabetes and has forgotten to take her medication. She goes into town shopping, and begins to feel dazed. Whilst in one of the shops she takes a bottle of champagne and walks out without paying. She doesn’t normally drink.

Discuss whether a defence of insanity or automatism would be possible in each of the following situations:

(a) Susie has clashed heads in a hockey match and has been left feeling dizzy and dazed. After some treatment on the side of the pitch, she comes back on the pitch to continue playing and swings her stick wildly, hitting Stephanie and breaking her leg.

(b) Jerry suffers from diabetes, which he controls with medication. One day he takes his medication, but does not eat afterwards. Later whilst driving, he blacks out and crashes his car into Mike, killing him.

(c) Brian believes that god is talking to him through his teapot. Brian believes that god has told him to remove all chocolate biscuits from the local store, as they are interrupting god’s powers. Brian goes into his corner shop and walks out with all of the biscuits without paying.
Reforms to the Law on Insanity and automatism

Source Links: Source 2; Source 4; Source 6

<table>
<thead>
<tr>
<th>Law Commission Scoping Paper on Insanity 2012 (Chapter 4 of the supporting materials gives an excellent critical overview.)</th>
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<tbody>
<tr>
<td>What was the problem?</td>
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<td>What were their biggest problems with the current law?</td>
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<td>Insanity is not available as a defence for all offences</td>
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<td>Relationship between insanity and automatism</td>
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<td>Acquittal for automatism fails to protect the public</td>
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<td>Out of Step with modern laws on psychiatry</td>
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<td>Label of insanity</td>
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<td>D has to ‘prove’ insanity</td>
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<td>In summary:</td>
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The Butler Committee on Mentally Disordered Offenders 1975

| What did they recommend? | Changing it to ‘not guilty on evidence of mental disorder’, and changing the burden of proof, so that D raises it, and then P has to disprove it beyond reasonable doubt. |
## What effect would the plea have?

D would have two routes:
1. Argue he had no mens rea because of it (a little like the current law on automatism)
2. Argue NG because at the time he was suffering from a ‘severe mental illness or subnormality’

## Coroners and Justice Act 2009 amending Homicide Act 1957

**What did it do?**

Update the partial defence of diminished responsibility manslaughter to reflect more modern and medical terminology. **BUT** it only applies to murder.

## What is the new partial defence of DR?

**Persons suffering from diminished responsibility (England and Wales)**

(1) In section 2 of the Homicide Act 1957 (c. 11) (persons suffering from diminished responsibility), for subsection (1) substitute—

> "(1) A person (‘D’) who kills or is a party to the killing of another is not to be convicted of murder if D was suffering from an abnormality of mental functioning which—
>   (a) arose from a recognised medical condition;
>   (b) substantially impaired D’s ability to do one or more of the things mentioned in subsection (1A), and
>   (c) provides an explanation for D’s acts and omissions in doing or being a party to the killing.
>
> (1A) Those things are—
>   (a) to understand the nature of D’s conduct;
>   (b) to form a rational judgment;
>   (c) to exercise self-control.
>
> (1B) For the purposes of subsection (1)(c), an abnormality of mental functioning provides an explanation for D’s conduct if it causes, or is a significant contributory factor in causing, D to carry out that conduct."

(2) In section 6 of the Criminal Procedure (Insanity) Act 1964 (c. 84) (evidence by prosecution of insanity or diminished responsibility), in paragraph (b) for ‘mind’ substitute ‘mental functioning’.
**Writing a Model Answer:**

**Explain the significance of *R v Burgess* [source 3] to the development of the law on insanity.**

**AO2 STRUCTURE:**

1. **INTRODUCTION:**

| Identify the area of law, and the importance of the case (what was decided and why) | The Court of Appeal upheld D’s conviction for s.18 GBH holding that the sleepwalking was a disease of the mind for the purposes of the M’Naughten rules (Source 3, line33-36), and therefore amounted to insanity in the law. D had wanted to argue that due to his sleep walking he was acting either automatistically or with no mens rea and so was not liable. |

2. **SECTION ONE**

| How does the decision link to the preceding law? How far does/ did it confirm the existing law? | This conclusion may be unfair to D, as previous obiter from the House of Lords in *Bratty* (Source 5, line 9) appeared to make it clear that the judges viewed sleepwalking as a “self – evident” example of automatism. However, The Court of Appeal followed the precedent of *Quick* in determining that for automatism the problem must be caused by an external problem and here the cause was internal (the sleep disorder). They also cast some doubt on Lord Denning’s “prone to recur in violence” test, as they make it clear that is one consideration, but not the only consideration in determining whether a condition will be classed as insanity or automatism in the law (Source 3, lines 31-35). |

3. **SECTION TWO**

| How does this decision reflect changes in the law? Do later cases confirm it? | This approach to the law has been followed by the lower courts in the case of *Lowe*, who plead NGRI to the murder of his father on the basis of sleepwalking. However, the courts, both lower down the hierarchy, and in other countries have taken a different approach. In *Parks*, the Canadian Courts held that sleepwalking was in fact automatistic, as in this case the proximate courses were work anxieties, stress and depression which were outside issues. In addition, where there is evidence that D’s condition may have been caused by an external condition, then automatism can be left to the jury, as has happened in a number of first instance sexsomnia cases such as Ecott. This means that there appear to be two separate approaches by the courts to the same issue, depending on the cause which might be unfair to D. |

4. **CONCLUSION**

| Did it really change the law? Yes/ No and why. Use the key words of the question. | Burgess, therefore, is significant as it confirms that if D is suffering from sleepwalking at the time of the incident, his only recourse is to plead NGRI under M’Naughten. It also confirms that in determining whether a disorder is automatistic or a disease of the mind the internal/external division is key, although this may lead to unfairness for some defendants. |
An Example answer:

Discuss whether a conviction for attempts is possible in each of the following situations:

(a) Dave, who suffers from epilepsy, goes round to Clive’s for tea. Whilst eating a biscuit, Dave suffers a seizure and hits Clive with a metal bar, lying around, causing a broken cheekbone. When asked about it later, Dave says he cannot remember anything about the incident.

When Dave hits Clive with the metal bar he will be judged sane unless he can prove that he was insane at the time of committing the offence under the M’Naghten Rules 1843. It is up to Clive to prove this on a balance of probabilities (Source 5, lines 17-19).

Dave could argue that when he hit Clive, he was suffering from a defect of reason. He could argue that since his epilepsy had deprived him of his powers of reasoning this was a defect of reason. In addition, when Dave had hit Clive he was suffering from an epileptic seizure. In Sullivan this condition was judged to be a disease of the mind (Source 2, line 15) and fall under the M’Naghten Rules. Since epilepsy is an internal source causing Dave’s action to hit Clive and that it is prone to reoccur in violence like in Bratty, it is likely that Dave will satisfy this part of the Rules.

Finally, Dave must not have known what he was doing, or known what he was doing when he hit Clive was wrong. Clearly when Dave says he cannot remember anything about the attack due to the seizure he must satisfy this part of the Rules. He clearly didn’t know what he was doing was legally or otherwise wrong when he hit Clive.

Therefore, in conclusion, Dave could successfully plead not guilty by reason of insanity to the attack.

(b) James thinks that all people with blue auras pose a threat to national security. He sees Sam walking past, who has a blue aura and stabs him in the back.

(c) Louis is very nervous about driving. To help him out, David hypnotises him. Whilst driving the car later, Louis becomes more and more reckless and causes a five car pile up through his driving. When questioned about it later, he can’t remember anything.
"No act is punishable if it is done involuntarily." [Source 5, Line 4]

Discuss how far this statement accurately reflects the approach of the courts to the law on automatism.

<table>
<thead>
<tr>
<th>Section</th>
<th>What do I do?</th>
<th>AO1</th>
<th>AO2</th>
<th>Source?</th>
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<td>Why do we provide a defence to those who act automatistically?</td>
<td>Contesting the meaning of disease of the mind.</td>
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<td>External Cause</td>
<td>How do we differentiate between the NGRI and this? Is it fair?</td>
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<td>Complete loss of control</td>
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**AO1**

- Lord Denning in *Brattt*, who wanted to plead automatism and TJ ruled could only plead insanity.
- Contesting the meaning of disease of the mind.

**AO2**

- Follows general presumption in the criminal law (voluntary act)
- Justified as a one off, and not a pattern of behaviour.
- Complete acquittal unfair compared with NGRI
- Based on policy considerations rather than medical facts.
- Links to lack of recklessness (D is not culpable as there was no risk they were aware of) and the ‘risk’ D poses to the public.
- However, is taking the substance a risk in the first place?
- Notion that external may turn internal.
- Medical evidence even where there is no medical term (doctors don’t use ‘automatism’)
- Arbitrary nature and unfair to D – same underlying cause in the diabetes cases, just the proximate cause which has convicted them.
- Limited scope (*Narborough*)

**Source?**

- *Brattt* (overruling *Charlson*)
- *Brattt* (overruling *Charlson*)
- *Brattt* (overruling *Charlson*)
- *Brattt* (overruling *Charlson*)
- *Broome v Perkins*
- *Attorney General’s Ref No2 of 1992*
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| Reforms & Alternatives | Law Commission Scoping Paper
  Insanity
  Butler Committee alternative approach. | • Takes into account the ‘impulsive’ action – *Hardie*.
• Argues it doesn’t protect us from danger (the diabetic who takes too much is prone to do it again)
• Butler – group as mental disorder, with two outcomes. |
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<td>Conclusion</td>
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According to Lord Lane, insanity is “a legal problem to be decided on legal principles” [Source 2, line 35]

Discuss how far this statement reflects the development of the law on insanity

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<td>Including reference to DR and automatism</td>
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General Comments
This was the first sitting of the 2013 Special Study paper on insane and non-insane automatism. This series candidates have made fewer common errors than in previous series. Centres and their candidates, in the main, have become very aware of the skills and requirements for each question and have clearly realised that while the topic changes each year, the skills do not. Again, while the G154 Mark Scheme is not prescriptive, certain core elements to each question must be present in a candidate’s response to move up the mark levels. For example, utilising the Pre-release material during the exam prevents candidates from having to recite large chunks of information, and instead allows them to concentrate on evaluation and application.

Previous reports had warned centres on the use of prepared responses to question 2 in particular. This series saw a movement away from prepared answers to a more holistic and thought-provoking discussion of the topic which was very pleasing to see. Such responses were duly rewarded. Similarly, previous reports lamented the answers of candidates who spend a disproportionate amount of time on Questions 1 and 2, and as such, would struggle on Question 3 for example. It was pleasing to see that this practice had all but stopped.

Comments on Individual Questions

Question 1
This question looked at the relevance of Bratty v Attorney-General for Northern Ireland and, in particular, whether it developed the law in relation to non-insane automatism. Responses were generally strong given the range of information available in Source 3, 5 and 6. Responses in the vast majority of cases discussed the Critical Point: that of Lord Denning’s definition of non-insane automatism. Few responses discussed the true ratio in the case, but in so doing were not penalised.

The ratio in Bratty was not that of Lord Denning’s definition; however, his definition has become the most endearing and well-known feature of the case and therefore was the Critical Point. A few responses did discuss the true ratio in the case, and were rewarded for doing so. It was especially pleasing to see that candidates again this series went beyond the recognised Analytical Points and brought in (usually) a well-thought further relevant analytical point from their AS year which analysed Bratty.

In general, well prepared candidates used Sources 5 and 6 clearly as the basis of their response and were able to analyse the development of the law on non-insane automatism beyond the marks available purely from the Source.

Most candidates therefore, followed a clear pattern of response:
1 the discussion of Lord Denning’s definition;
2 his flip analysis of what he considered was not insanity through the continuing danger theory;
3 then – using the Sources – the issue of the last stand of the desperate and the problems of the burden of proof to great effect.

Also, given the 2012 Law Commission’s scoping paper, there was much opportunity to discuss the Commission’s thoughts on Bratty and its aftermath as a ‘further analysis’ point. Some responses missed the opportunity to gain marks by indulging in long discussions of Linked Cases where, in effect, the marks had already been achieved much earlier in their responses; and in the missed understanding of the question which asked for the development on the law of automatism, here meaning non-insane. Some candidates took the opportunity to discuss insane automatism and its impact on epilepsy, which while somewhat relevant, was not the main thrust of the question.

Question 2
Here the focus was on the unsatisfactory nature of the definition of insane automatism with a particular analytical focus on whether criticisms of the definition have been tackled through subsequent enactments and the common law. The best discussions, again, commented on the accuracy of the quote in the context of the overarching theme (role of judges, use of precedent and the development of law) with specific analysis as to whether ‘the stigma of being labelled insane remains’. Responses which did not focus on the quote and, possibly, were pre-prepared, struggled to achieve the higher levels.
Stronger responses spotted the importance of contextualising the law through its origins of the *M’Naghten* Rules and how the subsequent common law ‘developments’ have assisted or hindered its consequent development. Such responses were also able to thoroughly discuss the *M’Naghten* sub-definitional areas. However, a significant minority of candidates based their entire response on the statutory enactments of 1991 and 2004 and ignored *M’Naghten*, which was unusual given the basis of the current law is that from *M’Naghten*. Such responses were unable to achieve above Level 2 or 3 without a discussion of the common law. Again, a golden opportunity was either used or completely missed in the Law Commission’s 2012 Scoping Paper on insane and non-insane automatism. Responses could nevertheless gain a Level 5 response without such a discussion, but would have been enhanced by this.

In the majority of responses the analysis and evaluation (AO2) achieved Level 4. There was a lot of discussion about the inadequacies of the defence coupled with some good links to the question. Again there was clear evidence that the sources seem to have been utilised more than in previous series. However, discussion (AO1) was frequently disappointing. On many occasions, responses defined *M’Naghten* but then failed to further define the elements from, for example, *Clarke, Kemp* and *Windle*. This was a limiting factor in AO1 marks as they didn’t provide good definitions.

**Question 3**

*Question 3 followed the customary three scenarios on the given topic area. Each part is worth 10 marks and based on three separate defendants. It is up to the candidates to conclude whether a conviction is or is not available in each scenario.*

- For (a) a successful establishment of either defence would be unlikely. As Samia maintained a degree of control while driving this could prevent non-insane automatism being proved, and since there was no obvious internal factor, a discussion and/or a defence of insane automatism was irrelevant;

- For (b) a potential conviction for a non-fatal offence looked unlikely given that Molly’s reflex action to a wasp could give rise to a defence of non-insane automatism. However, if Molly had been reckless in her actions then she may be guilty of such an offence. Again, it looked unlikely that there was any evidence of insane automatism on the basis of the lack of an internal factor;

- For (c) since the hyperglycaemic background to Sylvia is similar to that of the case of *Hennessy* a thorough discussion of insane automatism was required.

Strong responses, in relation to the most appropriate defence, with a linked case(s) cited in support, and application to the scenario together with a correct conclusion would allow a candidate to achieve a high level response. The majority of marks on Question 3 are gained by application (AO2) as opposed to knowledge and understanding of the law (AO1). Questions attracted good responses, in general, with many able responses demonstrating both thorough knowledge and high level application skills.

Part (a) responses were mixed, perhaps as candidates began the thought process as to which defence was the most appropriate (or only) available defence. Therefore, in some cases responses simply discussed insane automatism ignoring the more obvious, although unavailable, defence under non-insane automatism. Some discussed both defences for this and each scenario, without thinking about the most likely defence, if any at all. At times there was also too much focus on case facts without any application. However, not many responses discussed the issue as to whether Samia’s acts were, in fact self-induced.

Part (b) was generally better answered than (a), again as nearly all responses realised it was a possible non-insane automatism defence. Most discussed the external factor but often missed applying the definition in terms of reflex action. Again, not many responses discussed the issue as to whether Molly’s acts were, in fact, self-induced.

For Part (c) the responses were the strongest since nearly all discussed the correct defence of insane automatism. Responses went through the four elements of the *M’Naghten* Rules but missed opportunities for achieving marks by not applying the scenario or simply saying, for example: "There has to be a defect of reason and Sylvia has one". 
Finally... the examiner’s overall advice:

**Candidates should remember for all questions:**

- to read each question thoroughly so that they are absolutely sure what it is about
- to always refer back to the appropriate source for further information
- to plan their answers briefly at the start of the exam to ensure that:
  - they only use relevant information
  - they do not miss any information that is relevant
- to always use law, whether cases or statute, in support of both their arguments for essays and in their application for the problem questions
- to avoid excessive use of the facts of the cases – it is the principle that is important
- to make sure that they answer the actual question set
- to make sure that their time management is good – they are having to answer in much shorter time scales than for the option papers.
**R v Quick 1973**

**Ratio:**
Malfunctioning caused by a transitory external factor is not sufficient for a disease of the mind.
An external factor it may not always relieve D of liability e.g. when self induced.

**Prior Cases...**
- Lipman
- Kemp

**Following Cases...**
- Sullivan
- Hennessey
- Bailey

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**M'Naughten 1843**

**Ratio(!):**
Every man is presumed to be sane and responsible for his crimes until the contrary be proved.
D will be insane if he is suffering from a defect of reason caused by a disease of the mind, such that he does not know the nature and quality of his act, or if he did, that it was wrong.

**Prior Cases...**
- Hadfield
- Ferrers

**Following Cases...**
- Sullivan
- Windle
- Johnson
**Hennessy 1989**

**Ratio:**
Stress, anxiety and depression cannot be enough as external factors on their own for automatism.

Hyperglycemia is a disease of the mind, and internal factor

**Prior Cases...**
- Quick
- Sullivan

**Following Cases...**
- Law Commission Scoping Paper 2012

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**Burgess 1991**

**Ratio:**
A disorder which manifests itself in violence and might recur (though it doesn’t have to!) is sufficient to be a disease of the mind.

Sleepwalking, as here is was caused by an internal factor, was sufficient.

**Prior Cases...**
- Bratty
- Rabey
- Sullivan

**Following Cases...**
- Lowe
- Thomas
- Bilton
**Sullivan 1983**

**Ratio:**
Disease of the mind was any internal cause which affected reason, memory or understanding, whether temporary or not.
Condition affecting D must be prone to recur in violence.
Protection of society from dangers underpinned the defence.

**Prior Cases...**
- Bratty
- Kemp

**Following Cases...**
- Burgess
- Johnson

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**Bratty v Attorney-General for Northern Ireland 1963**

**Ratio:**
Confirmed that automatism is a defence as there is no voluntary act.
Defined non-insane automatism as an act done by the body without control of the mind, caused by an external factor.
Any mental disorder prone to recur in violence is a disease of the mind.

**Prior Cases...**
- Charlson

**Following Cases...**
- Broome v Perkins
- Sullivan

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**Law Commission Scoping Paper**

1963

**Charlson**
Kemp 1957

Ratio:
A disease of the mind is anything which affects the ordinary faculties of reason, memory and understanding. 'Mind' is not limited to brain, but includes things, both temporary and not, which cause defect of reason. Guilty but insane was the verdict then.

Prior Cases...
M'Naughten

Following Cases...
Sullivan

R v T 1990

Ratio:
PTSD is not a disease of the mind, as it is caused by an external factor (the rape). The categories of automatism are not closed. Jury convicted despite the plea.

Prior Cases...
Sullivan
Quick

Following Cases...
Narborough