Note to Candidates and Tutors:

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the January 2012 examinations. The suggested answers set out a response that a good (merit/distinction) candidate would have provided. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners’ reports which provide feedback on student performance in the examination.

SECTION A

Question 1

Intention and recklessness are the two most important fault elements used in criminal law. As far as these two forms of Mens Rea (MR) are concerned, liability cannot be established without evidence as to what a person foresaw when he committed the acts which caused the prohibited results.

Exactly what it is he had to foresee and how much foresight he must be shown to have had, goes to the core of the debate relating to whether the dividing line between different types of subjective mens rea has become blurred. Direct intention, has been defined by Mohan (1976) as a person desiring to bring about the consequences of his actions, this has been approved by Gillick (1986).

The Criminal Justice Act 1967 (CJA) has played a part in the debate and S8 makes it clear that foresight is a subjective concept, based on what a person actually foresaw not what he ought to have foreseen, or indeed, what the reasonable person would have foreseen in his position. Common sense dictates that the more probable a consequence, the more probable it was expected or ‘foreseen’ and the more likely, therefore, it was intended by the person doing the act. This approach has been developed through caselaw and has become indirect/oblique intention.

In Hyam (1975) it was held that a person intends a result which he forsees as a (highly) probable result of his actions; whilst Moloney (1985) held that foresight that a consequence was a natural consequence of defendant’s (d’s) actions was evidence from which the jury may ‘infer’ intention. Hancock and Shankland (1986) the Court of Appeal guidelines set out that the greater the probability of a consequence the more likely it is that the consequence was foreseen and therefore intended. Nedrick (1986) clarified the decision in Hancock and Shankland by deciding that the degree of foresight necessary to ‘infer’ intention is virtual certainty, this decision also supported the decision in Moloney.
This led to the current leading authority in respect of indirect/oblique intention. *Woollin* (1998) approved *Nedrick* subject to modification. The most crucial was the substitution of the word ‘find’ for ‘infer’. This defined indirect/oblique intention as: *D intends a result if he knows that, barring all unforeseen circumstances, the result is a virtually certain consequence of his conduct.* *Matthews and Alleyne* (2003) further confused the law in this area by stating that foresight of a consequence is a virtual certainty and is evidence from which a jury may find that an act was intended. This decision reverted to the approach prior to *Woollin* and confuses the current standpoint in relation to indirect/oblique intention.

The difficulty for the courts in respect of the above cases was to decide which test should be applied in each particular case as this would impact on the direction that the judge gave to the jury prior to retiring.

The cases were decided on the level of awareness of the consequence of the act that a defendant had, or must have had and whether the jury were entitled to draw inferences or whether they had a duty to draw inferences to enable them to decide if the outcome was intended. The defendant must, therefore, have a very high degree of foresight before his actions could be labelled as intentional.

Recklessness, by contrast, implies risk taking as opposed to the defendant foreseeing a consequence as a certainty. Subjective recklessness is defined as the conscious taking of an unjustified risk and was established in the case of *Cunningham* (1957). The question to be asked when considering subjective recklessness is “Was the risk in D’s mind at the time the crime was committed.” In other words, did D foresee the risk of his actions? The key point to note about this approach to recklessness is that there would be no liability if the risk had never occurred to the defendant.

Objective recklessness is the conscious or unconscious taking of an obvious risk and was established in the case of *Caldwell* (1981). The question to be asked when considering objective recklessness is “Would a ‘reasonable man’ have recognised the risk?” This was the standpoint until *G and Another* (2003) which changed the law in respect of the MR required for criminal damage which is now subjective recklessness.

It is clear, therefore, that direct intention requires aim, purpose or desire of the consequences. This could not be confused with indirect/oblique intention or recklessness.

Confusion does, however, arise between the definitions of indirect/oblique intention and recklessness. Subjective recklessness requires a minimal foresight of the result. The definition of indirect/oblique intention has been clarified with *Woollin* and *Matthews and Alleyne* that virtual certainty is evidence of intent and not equivalent to intention.

However, it is still uncertain whether juries can infer intention where there is less than virtual certainty. During the summing up in *Woollin* the recorder gave the jury guidance in accordance with *Nedrick*. He told the jury that if they were satisfied that D realised there was a ‘substantial risk’ of the consequence then they could find intention. The House of Lords later decided in this case that by using the phrase ‘substantial risk’ the judge had blurred the line between intention and recklessness – Lord Steyn
Intention is said to be the higher standard MR whilst recklessness is a lower standard MR. It has been suggested that the level of awareness or of probability of an outcome are the equivalent of intention. If the judge asked the jury to consider whether the outcome was a natural consequence (Moloney) of D’s actions or whether he foresaw a high level of probability of its occurrence (Hancock and Shankland) the MR was placed at the lower level and, as was stated by the House of Lords, blurred intention and recklessness.

Finally, the inclusion of foresight in cases where the MR was intention goes beyond aim, purpose and desire and it could be argued that this is a reason why the boundaries between indirect/oblique intention and subjective recklessness have become blurred.

**Question 2**

Conspiracy is an inchoate offence, that is, an incomplete offence where a person can be guilty even though the intended crime does not result. There are two types of conspiracy, common law conspiracy and statutory conspiracy.

Common law conspiracy occurs when there is a no resulting fraud but where D has set out to harm victim’s (V’s) economic interests although deception is not required Scott (1974) Cooke (1986). The MR required dishonesty as per the Ghosh (1982) test.

The question requires consideration of statutory conspiracy under S1 Criminal Law Act 1977 (CLA) which provides that a conspiracy is committed when a person agrees with any other person that a course of conduct shall be pursued which will result in a crime. The person intends to reach and agreement and intends that the course of conduct will result in an offence being committed by one of more of the parties to the agreement.

A conspiracy is identified at the time of agreement, with the relevant intention to carry out the crime as the defining point. Therefore, there must be at least two parties to an agreement. Chrestny (1992). All parties must be aware that they are entering into an agreement. Griffiths (1966) Davenport (2009) Jackson (1985). The parties must agree by going beyond the stage of negotiation Walker (1962).

The course of conduct referred to may be mistakenly thought of as the actus reus (AR), whereas it is the act of agreement which is the AR. What makes the act of agreement into a crime is the presence of the relevant mens rea (MR). The relevant MR requires an intention to reach an agreement and that recklessness is will not be sufficient. There must also be an intention that the course of conduct will result in an offence being committed by one of more of the parties to the agreement Anderson (1985) McPhillips (1990 Yip Chiu Cheung (1994).

The offence of conspiracy requires that the MR that would prove intention to cause result, therefore, for an offence of conspiracy to murder, D must intend to kill someone Siracusa (1989). There must also be knowledge of the surrounding circumstances Saik (2006). Therefore, to be guilty of conspiracy to launder money there must be knowledge that the money is from the proceeds of crime Suchedina (2006) Tree (2008).

Joint enterprise requires a principal (P) who is the person who commits a crime, and a secondary participant (D) who assists P in the commission of the crime. Under S8 Accessories and Abettors Act 1861 (AAA) D can be liable for aiding,
abetting, counselling *Wilcox V Jeffrey (1951)*, or procuring the offence committed by P.

As with conspiracy joint enterprise involves a prior agreement with P to commit an offence. In agreeing to the participation in the offence D automatically satisfies the AR of secondary participation. There is no need to prove aiding, abetting, counselling or procuring for joint enterprise *Petters and Parfitt (1995)*. D is also liable if he helps to plan the offence even if he is not present when it is committed *Rook (1993)*.

The relevant MR requires knowledge that one of several offences may be committed *Maxwell (1978)*, that P intended to commit any type of offence even though details are not specified *Bryce (2004)* and there is the potential for a conviction where P deliberately commits a different offence to that agreed ie GBH agreed but murder committed *Rahman (2008)*.

D would not be guilty if P's conduct was outside the scope of the agreement and the agreed result occurs by different means than those discussed *(Powell and Daniels; English (1997)* or where P commits an offence which is different from the one agreed *Gilmour (2000)* *Rafferty (2007)* *Campbell (2009)*, or a weapon was used in a different way to that agreed or a different weapon was used *Gamble (1989)* *English; Yemoh (2008)*.

It is unclear if D should be convicted of a lesser offence when P committed murder but D was not aware that death or serious harm may result. In *Uddin (1998)* and *Mitchell and King (1999)* it was held that an alternative conviction for manslaughter would not be possible in respect of D. However, the later cases of *Gilmour (2000)* and *Roberts, Day and Day (2001)* decided that it was possible to convict D of manslaughter when P had been convicted of murder. The most recent decision in this area *Rahman (2008)* decided that S should be acquitted.

Conspiracy is designed to enable the law to intervene at an early stage in criminal planning and activity and must necessarily be related to the actual intentions of the conspirators, whereas the joint enterprise doctrine operates only when the plan is carried out and enables account to be taken of what actually happened in relation to the intention and foresight of D. The joint enterprise doctrine will impose liability in circumstances where conspiracy would not (eg in relation to an agreement to commit Actual Bodily Harm (ABH) where D foresees a real risk that P will kill).

Whilst they are similar in some aspects the main difference lies in the MR. Conspiracy requires an intention that the course of conduct will result in an offence being committed. Joint enterprise requires knowledge or foresight that any required result may be achieved. D could be excused liability if P's conduct was outside the scope of the agreement and D can withdraw from the agreement provided he has communicated the withdrawal to P *Gallant (2008)*. Therefore, conspiracy and the doctrine of joint enterprise are separate and distinct and there is still a need for both in criminal law.

**Question 3**

The law in relation to the partial defences under the Homicide Act 1957 (HA 1957) has been changed by the Coroners and Justice Act 2009 (C&JA 2009).

a) Diminished Responsibility under S2 HA 1957 occurs when, at the time a person kills another he was suffering from an abnormality of mind, arising from arrested
or retarded development of mind or any inherent causes or induced by disease or injury), which substantially impaired his mental responsibility for the killing.

Now under S52(1)(1A) C&JA 2009 it is an abnormality of mental functioning arising from a medical condition which substantially impaired his ability to understand the nature of his conduct or form a rational judgement and/or exercise self control.

Are the subtle changes beneficial or necessary? Under Byrne (1960) an abnormality of mind was what a jury would consider to be so out of the ordinary that it ought to be classed as abnormal. This had to be interpreted as an abnormality of the functioning of the mind. Under S52 C&JA 2009 mind has become mental functioning, which rectified the gap in the old law. The abnormality must have arisen from ‘a recognised medical condition’ under the new law. This would include psychiatric, psychological and physical conditions. This is potentially wider than the original definition and gives more scope to the types of conditions that would be included in the defence.

‘Substantial’ under HA 1957 is the definition derived from the case of Lloyd (1967), ‘less than total and more than trivial’. Under HA 1957 this was interpreted as the defendant’s general responsibility had to be substantially impaired. Whilst S52 C&JA 2009 provides that the substantial impairment has to be of the defendant’s ability to understand the nature of his conduct, form a rational judgement, or exercise self control.

Although these elements are wide in scope, more than likely they are narrower than the previous requirement for general responsibility. This is not beneficial or necessary as it has narrowed the requirement for responsibility for one’s actions. S52(1)(1)(c) C&JA 2009 adds that the abnormality for mental functioning provides an explanation for acts and omissions. This provides a causal connection between the abnormality and the killing. This amends what was implicit under HA to being explicit under S52 C&JA 2009.

Generally the changes to the defence of diminished responsibility are beneficial and one could argue necessary. The only area in which reservations may be expressed is in the area of the defendant’s responsibility for his actions, which I believe may have been narrowed.

b) The common law defence of provocation which was modified by statute under s3 HA 1957 has been replaced by the defence of loss of control which was derived from S54 and 55 C&JA 2009.

Under S3 HA 1957 where a person was charged with murder and was provoked to lose his self control, the jury determined whether the provocation was enough to make the reasonable man do as he did. This establishes subjective and objective elements to the defence of provocation.

The subjective element stated that ‘there must be some provocation together with a sudden loss of control’, Duffy (1949). This was later overturned by Ahluwalia (1992) where a ‘loss of self control’ could also be a slowburn reaction as in cases of long term partner abuse.

The objective element posed two questions: first would the reasonable man have been provoked? (gravity of provocation) and then would the reasonable man have lost control and acted as the defendant did? This meant that if the provocative conduct was directed at a characteristic of the defendant, that would
be a characteristic which affected the gravity of the provocation and, therefore, that characteristic would be relevant to the reasonable man. 

*Morhall (1996)* D was taunted about his drug addiction and he killed V. This was held to be provocative conduct directed at a characteristic of D, which then affected the gravity of the provocation. Therefore that characteristic would have been relevant to the reasonable man. In *Camplin (1978)* D’s age and sex were also relevant to the gravity of provocation.

The above was overruled by *Holley (2005)* D was a chronic alcoholic who killed his girlfriend after an argument. Jury directed to assess D’s loss of control by applying a uniform, objective standard of the degree of self control to be expected of an ordinary person of D’s age and sex with ordinary powers of control.

Loss of control under S54(1) C&JA 2009 still requires a loss of self-control caused by a qualifying trigger; and a person of his age and sex with the normal degree of tolerance and self-restraint circumstances of him, and of the same age and sex of him might have reacted in the same or similar way to him. Under S54(2) C&JA 2009 the loss of self control need not have been sudden as in *Ahluwalia*.

The two qualifying triggers are set out S55 C&JA 2009 and are fear of violence or anger by things done or said (or both) in circumstances of an extremely grave character and caused D to have a justifiable sense of being seriously wronged. This is similar to the previous defence of provocation but for the exception that the language used here is far more severe. This could seriously limit the application of the defence.

The objective test remains under the new law; the test set down in *Holley (2005)* remains good law with the reasonable person being replaced with the ordinary person. The confusing thing about the new law is that ‘characteristics’ has been replaced by ‘circumstances’. This makes it unclear whether facts such as those in *Morhall* would be covered under the new defence.

The Law Commission, whose recommendations led to the C&JA 2009 has proposed that the ‘loss of self control’ requirement be abolished, but it still appears in the act. This is confusing as ‘loss of self control’ does imply an impulsive reaction, how could such a reaction never be sudden? *Duffy and Ahluwalia*

The main difference between these acts is the language used. Most of the principles of the old law have been transferred into the new law. Some aspects are now much clearer and some have become more confusing. It was necessary to bring the law up to date and the new law has benefited greatly from the existing law. It remains to be seen whether the confusing aspects of the new law are ironed out, when new cases are decided.

**Question 4**

This question requires consideration of the Theft Act 1968 (TA 1968), in particular consent which requires an examination of the elements of theft (s1 TA 1968), concentrating on appropriation, dishonesty and intention to permanently deprive.

Under S3 TA 1968 appropriation is any assumption of the rights of an owner. An assumption of one of these rights is sufficient for appropriation, in *Morris (1983)* it was changing the labels on goods, which only the owner could do.
The main question here is can there be an appropriation with the owner’s consent? This will include consent by deception and freely given. In Lawrence (1971) a taxi driver deceived a student into paying an excessive fare. In this case V’s consent did not prevent appropriation as the taxi driver deceived him into consenting. There then followed a number of cases in which it was decided that consent prevents appropriation Eddy V Ninman (1981) Dip Kaur (1981) Morris (1983). The position was clarified by the House of Lords in Gomez (1993). Although there was an appropriation with the owner’s consent, in Gomez the consent was obtained by deception therefore reverting to Lawrence and the conclusion that consent obtained by deception would not prevent appropriation. Gomez causes considerable debate as many feel he was charged incorrectly and had he been charged correctly the law might have developed differently.

However if consent is freely given then under property law rules there can be no appropriation; however after Hinks (2000) it is clear that the presence or otherwise of the elements MR that will determine whether D’s conduct amounts to theft.

The MR required for theft are dishonesty and the intention to permanently deprive. Under s2 TA 1968 dishonesty is defined by what is NOT dishonest; which includes if D believes he would have the consent to the appropriation. The question will be whether they honestly believe in that consent; to which the Ghosh test may guide a jury.

In Ghosh (1982) a two limbed test was established and both limbs must be satisfied to prove dishonesty. Firstly was D’s appropriation dishonest according to the ordinary standards of reasonable and honest people? This is the objective element and only if the answer to this question is yes would you proceed to the next limb; Was D aware that reasonable and honest people would regard this appropriation as dishonest? This is a subjective test and if the answer is yes then D is dishonest.

Under S6 TA 1968 it is sufficient that D has the intention to permanently deprive Morris (1983) Wheatley and another (2006). Intention can be inferred if D intended to treat the property as his own by disposing of it regardless of V’s rights Cahill (1993) Lloyd (1985), and if D spends money which isn’t his even if he intends to replace it Velumyl (1989).

Whether there can be consent to appropriation depends on whether the consent was gained by deception or whether it was freely given. In both cases the current law is that the circumstances should be considered together with the MR to determine whether D’s conduct amounted to theft. If there was no honest belief that he had a legal right to it, had V’s consent to take it or could not locate V the Ghosh Test must be employed to establish dishonesty. Intention to permanently deprive will relate to pure intention, inferred intention and borrowing but not returning.

It may be hard to believe that there could ever be consent to an appropriation if the consent was gained by deception as the act in itself would be dishonest.

According to the precedents it is therefore correct that theft can occur with consent to appropriation as long as D was dishonest in the appropriation or had the intention to permanently deprive the owner of the goods.
SECTION B

Question 1

There are a number of offences for which Jack could be liable in this case.

The first offence to consider is Criminal Damage, under S(1) of the Criminal Damage Act 1971 (CD 1971). The situation here relates to the basic offence under S1(1) CDA 1971. The AR is that without lawful excuse D’s conduct destroys or damages property belonging to another. The MR is where D intends or is reckless as to destroying or damaging the property.

He would not have the defence of lawful excuse under S5(2) Denton (1982), Appleyard (1985) and Jaggard and Dickinson (1980) he couldn’t possibly believe that Amina (who he did not know) would consent to him damaging her property. The damage caused to the window is temporary and could be rectified by Amina at her own expense A V R (1978), Hardman and another (1986). She may be able to claim compensation off Jack.

Jack deliberately broke the window in Amina’s back door in order to gain entry into her house. He was obviously intending to break the window or at least was reckless that the window would be broken. Jack will be liable for an offence of criminal damage.

The next offence to consider would be Burglary. Under S9 of the Theft Act 1968 (TA 1968) a person will be guilty of burglary if he enters any building or part of a building as a trespasser with intent to steal, inflict grievous bodily harm (GBH) on any person therein or to cause criminal damage to the building or anything therein or, after having entered any building or part of a building as a trespasser he steals or attempts to steal or inflicts or attempts to inflict GBH on any person therein.

In Jack’s case he knew that he was trespassing as he did not have Amina’s permission to be in her house Collins (1973). There is no evidence that he entered with intent to steal, but having entered as a trespasser he did steal her personal property. There is no requirement of intent to commit an offence for an offence under S9(1)(b), however to prove a S9(1)(b) offence, theft or GBH has to be committed or attempted.

The relevant charge in this case could be burglary under S9(1)(a) or S9(1)(b).

Next we have to consider Fraud. Under S2 of the Fraud Act 2006 (FA 2006) to be guilty of fraud a person must dishonestly make a false representation and intends by making it to make a gain for himself or another, or cause loss to another, or expose another to a risk of loss.

Jack makes an implied representation that Amina’s bank card is his when he uses it to withdraw money from the cashpoint Doukas (1978), Stonehouse (1978) and Darwin and Darwin (2008). The representation is obviously false as it is not his account.

To establish whether Jack has been dishonest we must apply the Ghosh (1982) test for dishonesty. The question we need to ask is “Was the representation
dishonest according to the standards of a reasonable and honest person and would Jack have realised this?” The answer would obviously be that Jack must have realised that his actions were dishonest by taking the card in the first place and that he was trying to permanently deprive Amina of her money.

He took the money with the intention to make a financial gain for himself therefore, Jack would be liable for an offence of fraud by false representation.

Finally we need to consider Attempted Burglary. Under S1(1) of the Criminal Attempts Act 1981 (CAA 1981) to be guilty of attempting to commit an offence a person must perform an act, which is more than merely preparatory to committing the offence, intending to commit the offence and intending to bring about the result, and knowing that the surrounding circumstances would be in existence or was reckless as to this.

At common law the act had to be sufficiently proximate to the crime Eagleton (1835). The CAA 1981 requires an act to be more than merely preparatory to the commission of the crime Gullefer (1990), Jones (1990), Litholetovs (2002), Tosti (1997), Moore (2010).

When Teresa got home from her shopping trip, Jack was already in her house, therefore he did an act which was more than merely preparatory – he had entered the house without permission. We do not know whether he knew Teresa was out but that does not matter as he could have been reckless as to whether she was out or not. It doesn’t matter why he intended to break in, the fact that he had intended to break in is sufficient for the offence.

**Question 2**

This question requires consideration of Den’s criminal liability in respect of Andre and Sam. In order to consider Den’s liability a range of non fatal offences against the person should be considered.

S39 Criminal Justice Act 1988 (CJA 1988) concerns common assault. Common assault is an act by which a person intentionally or recklessly causes another to apprehend immediate, unlawful personal violence. There does not have to be any contact, the offence can be committed using words alone Constanza (1997). Silence can also amount to an assault Ireland (1998).

Applying this to the facts, when Den threatened to hit Andre if he did not give him his money, he could have committed an assault. The fact that he then tried to punch Andre would support the notion that Andre would have apprehended immediate unlawful personal violence. Therefore, Den is liable for an assault under S39 CJA 1988 in respect of Andre.

S47 Offences Against the Person Act 1861 (OAPA 1861) concerns an assault occasioning actual bodily harm (ABH) and is the intentional or reckless infliction of unlawful violence upon someone Savage;Parmenter (1991). ABH refers to an assault which interferes with the comfort of the victim and is more than transient or trifling Miller (1954) and T V DPP (2003, and there has to be an injury Chan-fook (1994).

S20 OAPA 1861 is the unlawful and malicious wounding or inflicting of grievous bodily harm (GBH) upon any other person, either with or without any weapon or instrument. A wound consists of a break to both layers of skin Eisenhower (1984). GBH means ‘really serious harm’ Smith (1961), Wood 1830 and Bollom.
(2004). There must be foresight (or intention) of causing some harm *Mowatt (1968)*

S18 OAPA 1861 is unlawfully and maliciously by any means whatsoever wounds or causes any GBH to any person with intent to do GBH. The offence is virtually the same as that for S20 OAPA except for the substitution of ‘causing’ for ‘inflicting’ this changes the act from a reckless act to an intentional one. There must be an intention to cause GBH.

When Den punches Sam it is an assault. The injuries sustained by Sam are too serious to be an assault under S47 OAPA 1861. The injuries caused to Sam are a cut to his cheek requiring 15 stitches and concussion. These injuries would substantiate an offence under S18 or S20 OAPA 1861. Den intends to hit Andre but does not necessarily intend to cause him GBH. However, he should have been aware that there was a risk that his actions could cause some physical harm *Mowatt (1968)*. Therefore, Den would be criminally liable for an assault under S20 OAPA 1861 against Sam.

It doesn’t matter that Den intended to assault Andre as under the doctrine of transferred malice, the AR in relation to one victim can be transferred to another as long as the AR remains the same *Latimer (1886)* *Mitchell (1983)*. Malice can be transferred irrespective of whether Den succeeds in committing the AR against his intended target, Andre. In this case the AR of the crime was directed at Andre but was transferred to Sam when Den assaulted him as the AR remained the same.

Den may be considering a defence of intoxication. There are two types of intoxicants that need to be considered, dangerous and non-dangerous. *Bailey; Hardie (1984)*. Dangerous intoxicants such as alcohol, heroin and amphetamines, are those that are known to cause the taker to become aggressive or unpredictable. Non-dangerous intoxicants are those that are expected to be merely soporific or sedative. We know, therefore, that Den took a dangerous intoxicant in the form of alcohol which made him aggressive and unpredictable.

Next we must ask “Was Den’s intoxication involuntary or voluntary?” Involuntary intoxication occurs when a drink is spiked, prescribed drugs are taken in excess or non prescribed but non dangerous drugs are taken *Bailey; Watkin Davies*. This is not the case here. Voluntary intoxication occurs when there has been voluntary taking of dangerous drugs or drinking alcohol to excess. Den was voluntarily intoxicated by choosing to drink alcohol to excess.

Whether he can use the defence will depend on whether the crime was one of specific or basic intent. If it is a crime of specific intent the defence can apply provided there is evidence that Den was too drunk to form the intent *Mcknight (2000)*.

In this case the offence is S20 OAPA 1861 which is a crime of basic intent. This means that the defence of intoxication would not be available to Den as he was reckless in drinking the alcohol *Majewski (1976)*.

**Question 3**

In this question we are told what charges Sandra faces and the focus of the answer should, therefore, be the potential defences available to her. The defences to be considered here are automatism and insanity. Automatism and insanity are complete defences to murder and when pleaded successfully will lead to acquittal.
a) Part a requires you to focus on Sandra’s criminal liability and what defences, if any would be available to her. Intoxication would not be relevant here as the offence takes place 36 to 48 hours after she has consumed alcohol. Insanity is also not relevant as Sandra was not suffering from an internal disease of the mind.

Automatism would be the relevant defence to consider here. For Sandra to be able to rely on the defence of automatism she would have to be able to show that an external factor, resulted in involuntary conduct by her, where she was not at fault.

Automatism must relate to external factors and to temporary disturbances which cannot be related to any notion of disease eg the hypoglycaemic state produced where D suffers from diabetes and takes insulin. In Quick (1973) it was found that diabetes resulting hypoglycaemia is not regarded in law as a mental condition. LJ Lawton observed that Quick’s mental condition was not caused by his diabetes but by his use of insulin prescribed by his doctor which meant that the malfunctioning of his mind was caused by an external factor and not an internal disease of the mind.

This should contrasted with the case of Hennessey (1989) where it was decided that a diabetic who forgot to take insulin which resulted in a hyperglycaemic state, could argue the defence of insanity as the hyperglycaemia was regarded as being caused by an inherent defect – the diabetes itself.

Automatism requires a fundamental and not merely partial loss of control of movement. Broome V Perkins (1987). If D’s automatism is self induced but not due to intoxication he may have a defence even to a crime of basic intent, if P cannot establish that D was reckless in permitting himself to become an automaton Bailey (1983). This held that the defence would not be available where the state of automatism could be regarded as self induced ie where there was evidence that D was at fault in lapsing into the state of automatism.

Bailey must be relevant to Sandra’s situation. Was Sandra aware of the consequences of injecting insulin and not eating? On the facts available, she was. If she was reckless in taking the insulin and not eating, this would provide the basic intent for any offence she commits whilst in the state of automatism.

She is charged with S18 OAPA 1861 which is a crime of specific intent and Criminal Damage which is a crime of basic intent. Sandra would not be criminally liable for S18 OAPA 1861 as it cannot be proven that she intended to cause GBH to the security guard.

On the facts presented it can be proven that Sandra was reckless in injecting the insulin and not eating. Sandra would be criminally liable for criminal damage as this is a basic intent offence requiring the mens rea of recklessness. As the state of automatism was self induced the defence of automatism would not be available to her in this case.

b) Part b asks you to consider an alternative situation whereby Sandra forgot to self administer insulin but was suffering from hyperglycaemia at the relevant time. Once again intoxication is not relevant. Automatism is also not relevant.

Insanity is the relevant defence to consider here. There are two types of insanity, insanity preventing trial and insanity at the time of the commission of the alleged offence.
The latter is relevant to this situation. The definition for insanity is founded on the *M’Naghten Rules (1843)* and their subsequent interpretation by the courts.

For Sandra to satisfy the defence of insanity she would have to be able to show that on the balance of probabilities that she was suffering from a disease of the mind, which led to a defect of reason and the defect of reason meant that she did not know the nature and quality of her act and/or did not know that the act is wrong.

The disease of the mind must be internal to D *Sullivan (1984)*. As previously mentioned the case of *Hennessey (1989)* found that hyperglycaemia due to diabetes was a disease of the mind together with epilepsy *Sullivan (1984)*, sleepwalking *Burgess (1991)* and clinical depression and schizophrenia to name but a few. A disorder attributable to the temporary use of drugs will not be a disease of the mind as mentioned previously in *Quick (1973)*.

A defect of reasoning means an impairment of D’s powers of reasoning as opposed to a failure to use such powers *Clarke (1972)*. Nature and quality of an act relates to an awareness of its physical nature and quality not it moral quality *Codere (1916)*. *Johnson (2007)* confirmed the position that D can only rely on the defence of insanity if he did not know the act was legally wrong, even if he knew it was morally wrong.

Therefore, in this scenario, Sandra would be criminally liable for both offences. She forgot take insulin hence automatism would not be available. As in the case of *Hennessey (1989)*, she could argue that the hyperglycaemic attack was caused by an inherent defect ie the diabetes itself and was therefore a disease of the mind.

It would not be sufficient just to show this she would also have to show that she either did not know the nature and quality of her act or that it was wrong. For Sandra to able to use the defence of insanity she would have to prove that this was the case and, on the balance of probabilities, she was insane at the time of the commission of the offence.

**Question 4**

This question requires consideration of Ollie’s potential liability in respect of James and Abdul.

As James has died Ollie could be potentially liable for murder/ involuntary manslaughter and due to the other factors included in the scenario a discussion of whether the chain of causation was broken between his actions and James’s subsequent death is required. Ollie could only be found liable for the murder of James if he had the requisite intent to kill or cause GBH *Woollin (1999)*. This would require an awareness that serious injury *Cunningham (1957)* was virtually certain *Woollin (1999)* to result from him pushing James over the edge of the ridge, and that there was no break in the chain of causation. It is unlikely that Ollie would be liable for murder.

The relevant offence here in respect of James would be involuntary manslaughter, in particular, unlawful/ dangerous act/ constructive manslaughter. It is clear from the facts that there has been an assault which resulted in the death of James. The assault was an unlawful and dangerous act *Church (1965), Watson (1989) and Newbury and Jones (1976)*. When he pushed James over the ridge, Ollie didn’t intend to harm James but his action in pushing him was reckless.
The chain of causation seeks to provide practically applicable rules that balance legal and moral culpability so that there isn’t endless liability for linked consequences. We must now consider causation and whether there was a break in the chain of causation. Involuntary manslaughter is an offence for which there must be a result. It must also be proven that Ollie’s conduct caused James’s death when he pushed him over the ridge. It must also be proven that Ollie’s conduct was both a cause in fact and in law.

Factual causation is the ‘but for’ principle Pagett(1983), White (1910). ‘But for’ Ollie’s actions James would not have died, this is true. Legal causation is only considered if factual causation has been proved. Factors to be considered are, there must be a culpable act, the conduct must be significant and have more than a minimal effect in bringing about the result Cheshire (1991) and the sequence of events does not affect legal causation from being established.

There can be more than one cause. The conduct doesn’t have to be the sole cause of death, just one of the causes. Other causes can include pre existing conditions, whether medical Dear (1996), Carey and others (2006) and/or religious Blaue (1975). This is known as the ‘thin skull rule’ which means that D takes his victim as he finds him. A novus actus interveniens or a new intervening act could also break the chain of causation. There are a number of novus actus interveniens but the relevant one to be considered here is negligent medical treatment Jordan (1956), Smith (1959).

Applying the above to the facts in this case, causation both in fact and in law is present here. It is highly unlikely, on the facts of this case that a break in the chain of causation has occurred. Only where medical treatment or a delay in treatment is palpably wrong and reduces the original injury to a mere background to the offence, will it be classed as a novus actus interveniens. Ollie’s act led to the injury which required hospitalisation. There was no medical negligence, it was just unfortunate that James had an unexpected allergic reaction to the drugs administered. This was not the doctor’s fault as he could not have known.

Whilst he did not intend to hurt James, Ollie was reckless when he pushed him over the ridge and could reasonably foreseen that some injury would occur Cunningham (1957). Ollie would therefore be liable for involuntary unlawful/dangerous act/ constructive manslaughter in respect of James.

We must now consider Ollie’s liability in respect of the assault on Abdul.

Abdul’s injury consisted of reddening to the face, therefore, Ollie’s potential liability here would be for Battery under S39 CJA 1988.

Ollie intentionally or recklessly Venna (1975) Savage; Parmenter (1989) inflicted personal violence on Abdul Rolfe (1952). Abdul did not give Ollie permission to assault him therefore the contact was both physical Ireland; Burstow (1998) and unlawful.

Ollie carried out an unprovoked assault on Abdul. He intentionally punched Abdul, which means he intended to cause some injury to Abdul and was reckless what the result would be. In respect of Abdul, Ollie would be liable for Battery under S39 CJA 1988.