



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

LEVEL 3 UNIT 11 – CRIMINAL LITIGATION

JUNE 2023

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested points for responses is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the June 2023 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

Overall the paper was answered well and there were a high level of distinction grades in testament to the detail which was included in some of the answers given.

Candidates were able to give time limits for the filing of court appeals for example as was seen in question 3(f).

Candidates should note that if a question asks for a statutory reference this should include the year of the statute and care should be taken to ensure that the correct section has been noted.

A number of marks were available for application to the scenario e.g. explaining if in the circumstances a lawful arrest had been carried out and this was all material which was freely available in the case study materials so careful attention must be paid to these.



Care should be taken to ensure that the question asked is actually answered as there was a question asking for the procedure at an allocation hearing to be outlined, whereas some candidates wrote about the function of an allocation hearing.

Some candidates did not answer all the questions and time management must be considered to ensure that all questions can be attempted, especially those with higher marks available which in this paper appeared towards the end of the exam.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a) - Candidates performed well on this question with over three quarters gaining full marks.

(b)

Candidates could answer this question but not all were picking up the many points available as they wrote generally about why a lawful arrest had not been affected, without any reasoning or law to support this.

(c) - The majority of candidates only gained 1 mark here as they were not stating the correct Article and then what this protects.

(d) - Over half of the candidates were able to score either three or four marks here as this question was answered well.

(e)

This question was not answered well as candidates were not answering the question set and care must be taken to ensure that what is written as a response is what is actually required and will gain marks.

(f)

Although candidates knew what would occur, they needed to state that this would affect the admissibility of the evidence and the relevant provision, which many were not able to do.

Question 2(a)

Candidates were able to mention different requirements which must be met when Adam is in the police station, but not all of these were relevant to the question as being requirements when being interviewed and therefore some things which candidates had written did not gain credit such as the right to make a phone call, as this would not be specific to occurring during an interview.

2(b) - Well over a third of candidates were able to score 3 or 4 marks here so this question was answered well, some did not state the correct provision which was required.



2(c) - Only half of candidates were able to answer this correctly which was surprising as a few stated there would be no consequences.

(d)

Some candidates were not answering the question here and were referring to the purpose of an allocation hearing rather than the procedure and therefore were not writing items which were worthy of credit.

Question 3(a) – There were a lot of marks available here as students could mention the grounds and how they did not apply and what could be done to alleviate any of the prosecutions concerns.

(b) - Most candidates were able to mention the means and interests of justice test, however relatively few mentioned the correct statute.

(c) -Although the question specifically asked about the contents of the IDPC, many candidates went on to explain what is disclosure which was not what the question required.

(d) -Candidates were able to explain some of the procedures, but the vast majority did not mention the jury being selected and sworn in.

(e) - Many marks were available here for candidates to gain either by stating to what a plea in mitigation could relate e.g. offence, offender or by applying it to the scenario.

(f)

The majority of candidates were able to score full marks here as this had previously been commented on as an area of weakness in reports from previous exam series, and this had obviously been taken on board.

SUGGESTED POINTS FOR RESPONSE**LEVEL 3 UNIT 11 – CRIMINAL LITIGATION**

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<p>EITHER</p> <ul style="list-style-type: none">- summary offence- examples include speeding, common assault, etc <p>OR</p> <ul style="list-style-type: none">- indictable only offence- examples include s18 GBH, murder, rape	2
1(b)	<ul style="list-style-type: none">- s.24 PACE 1984- actual, attempted or suspected involvement in the commission of an offence- application – suspected involvement in causing s20 GBH- reasonable grounds that arrest was necessary- s.28 PACE 1984- must be told of fact of and grounds for arrest- application – was not told of grounds for arrest- must be cautioned- application – was not cautioned- s.117 PACE 1984- reasonable force may be used- application – force was unreasonable as officer pinned him against the car	8
1(c)	<ul style="list-style-type: none">- Article 3- prohibition of torture and inhuman or degrading treatment- Article 5- right to liberty and security	2
1(d)	<ul style="list-style-type: none">- S.61 PACE 1984- Code D- Non-intimate sample- Can be taken if suspect consents- Can also be taken without consent by using reasonable force <p>If suspect is detained in a police station/been arrested for recordable offence</p>	4
1(e)	<ul style="list-style-type: none">- S.40 PACE 1984- Officer reviewing must be inspector rank- Officer must be independent of investigation- First review must be made no longer than 6 hours after detention	4

1(f)	<ul style="list-style-type: none"> - S.78 PACE 1984 - S.76 PACE 1984 - S.82(3) PACE 1984 - Challenge to admissibility 	2
Question 1 Total: 22 marks		
Question Number	Suggested Points for Responses	Marks (Max)
2(a)	<ul style="list-style-type: none"> - interviews regulated by Code C PACE - continuous period of rest free from questioning or interruption; - prior to interview suspect to be cautioned - reminded of his/her entitlement to free legal advice; - suspects should not be made to stand during interview; - suspect is entitled to refreshment breaks; - interview should not exceed 2 hours without a break; - custody officer to decide if suspect is fit for interview; - juveniles or mentally vulnerable suspects should have an appropriate adult with them; - each interviewer should introduce themselves prior to the start of the interview - Code E of PACE provides that interviews with suspects of indictable only offences must be audio recorded 	7
2(b)	<p>- ID procedures Code D PACE</p> <p>Any three from:</p> <ul style="list-style-type: none"> • Must be officer unconnected to investigation; • Suspect or lawyer to be provided with first description; • Must be at least 8 other people in line up. • Must resemble the suspect; • Unusual features to be concealed or replicated on other images; • Suspect to see images prior to viewing by the witness; • Suspect can choose his position in the parade; • Prior to viewing the witness must be told that the person he/she saw may not be on the video; • Witnesses can view images as many times as they want; • Witnesses must not be shown images prior to the parade and must not be allowed to communicate with each other before or after the parade; and • A video is taken of the parade 	4

2(c)	Adverse inferences could be drawn at court from his refusal to participate	1
2(d)	<ul style="list-style-type: none"> - Magistrates Court Act 1980 - Prosecution makes representations - Defence makes representations - Magistrates make decision - Court asks Prosecution to outline any previous convictions - Court will consider allocation guideline set by Sentencing Council <p>Adequacy of court's sentencing powers taken into consideration</p>	4
Question 2 Total: 16 marks		
Question Number	Suggested Points for Responses	Marks (Max)
3(a)	<ul style="list-style-type: none"> - Sch 1 para 2 BA 1976 <u>Prosecution's application</u> - Substantial grounds for believing the Defendant will fail to surrender to custody - Substantial grounds for believing the Defendant will commit an offence whilst on bail - Substantial grounds for believing the Defendant will interfere with witnesses <u>Defence's response</u> - No reason to believe Adam would fail to surrender to custody (he has links to community with job and caring for his daughter) - Application whether Adam would commit an offence whilst on bail (has no previous criminal record) - Application that witness Sakura is unknown to Adam and therefore he is unlikely to make contact with her - May be managed with conditions such as: - non-contact order with victim/witnesses - residency order /reporting to police station 	6
3(b)	<ul style="list-style-type: none"> - AJA 1999 / LASPOA 2012 - CDA 1998 - full criminal legal aid / representation order - interests of justice test - means test - assess if interests of justice test justified as could be facing a custodial sentence - in Adam's case, as either way, means test is contributory scheme - assessed on income and capital 	5
3(c)	<ul style="list-style-type: none"> - Criminal Procedure Rules 2015 - Dependant on whether defendant was in police custody immediately before the first hearing - In either case, summary of offence - criminal record If not in police custody - any account given by the defendant in interview 	3

	<ul style="list-style-type: none"> - any written witness statement or exhibit that the prosecutor then has available and considers material to plea, or to the allocation of the case for trial, or to sentence - any available statement of the effect of the offence on a victim, a victim's family or others 	
3(d)	<ul style="list-style-type: none"> - The charge will be read out and a plea taken; - The jury is selected and sworn in; - Prosecution – opening speech, evidence read and live witnesses; - Examination in chief, cross-examination and re-examination; - Possible submission of no case to answer; - Defence – opening speech, accused may give evidence and live witnesses; - Prosecution and defence closing speeches; and - Judge sums up and advises on burden of proof 	8
3(e)	<ul style="list-style-type: none"> - matters relating to the offence - application – crime was committed on impulse, ie not planned by Adam - matters relating to the offender - application – Adam's first offence - application – Adam has a responsible job, i.e. paramedic - matters relating to future reform - application – Adam is very remorseful - application – Adam pleaded guilty - matters relating to type of sentence - application – effect of a custodial sentence on Adam's daughter and his employment 	8
3(f)	<ul style="list-style-type: none"> - Court of Appeal (Criminal Division) - 28 days 	2
Question 3 Total: 32 marks		