



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

LEVEL 3 UNIT 3 – CRIMINAL LAW

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

In some of the Section A questions some candidates provided only a short answer with little or no explanation of detail required to score well (e.g. Q2)

For Section B, a thorough knowledge and understanding of the law was essential to then progress and apply the law. Those candidates who achieved low marks, did so because there was either insufficient knowledge or in-depth application in their answers to award more than a few marks. Additionally, some candidates applied the law in questions which merely asked for the law to be stated.

Often candidates did not identify all of the elements of a crime. An example of this is in Section B Sc1 Q1(a), where some candidates did not identify the important legal term of 'dishonesty', in relation to the definition of the offence of theft.

Where candidates were required to state the law, they often failed to do so in sufficient detail. This then meant that they did not often apply the law thoroughly enough. An example of this is in Section B Sc3 Q2(c) where many candidates did not identify the detail needed to explain the



defence of intoxication, and then did not apply the law thoroughly enough in the next part of the question (2(d)).

Use of relevant case law/statute is also essential to score the higher marks, and many candidates did not mention these legal authorities to reinforce their answer(s).

CANDIDATE PERFORMANCE FOR EACH QUESTION

SECTION A

Question 1. Generally, well answered.

Question 2. Some candidates did not give sufficient detail (e.g. direct/oblique intention).

Question 3. Some candidates failed to identify that the offence of arson can be committed as a simple or aggravated offence of criminal damage.

Question 4. Some candidates erroneously stated that the *mens rea* of murder could include recklessness. Other candidates incorrectly detailed the *actus reus* of murder.

Question 5. Generally well answered. Case law is important here and some candidates failed to mention any.

Question 6. Many candidates did not explain the offences in sufficient detail and merely wrote e.g. 'dangerous driving' (which is an offence in its own right). Accuracy is essential.

Question 7. Many candidates failed to identify the term in sufficient detail.

Question 8. Generally well answered

Question 9. Many candidates did not explain the detail of the requirements of the defence of mistake in sufficient detail.

Question 10. Candidates were often not specific enough in defining strict liability.

SECTION B

Scenario 1

Question 1(a)

This tested the candidates' ability to identify the offence of theft and its constituent elements. The question was generally well answered, although some candidates did not mention the element of 'dishonesty'. Some candidates also erroneously applied the law in this section.

1(b)

Some candidates did not use correct legal terminology, using words such as 'take' instead of 'appropriate'.

Question 2(a)

Some candidates did not identify the important principle that the endangerment of life must be by means of the damage.

Those candidates who correctly identified the defence of duress (by threats) often did not provide enough detail of the elements of the defence in order to score well.

(b) - Some candidates did not apply the elements of the offence in detail.

Question 3(a) - Generally, well answered.

(b) - Some candidates failed to apply all of the elements of the offence to the circumstances.

Question 4(a)

Some candidates incorrectly identified the offence as murder, or 'voluntary manslaughter' (the correct offence is unlawful act manslaughter).

(b)

This was the most popular question. Some candidates did not apply all of the elements of the offence. Many candidates did not explain or apply the law in sufficient detail to do well. The absence of case law in some answers was noticeable.

Scenario 2**Question 1(a)**

Many candidates correctly identified the offence of gross negligence manslaughter but did not do so in sufficient detail to score well. Some candidates applied the law in this section (it should be applied in section 1b, below).

(b) - Some candidates did not apply the elements of the offence thoroughly.

Question 2(a)

Some candidates did not identify the detail of the elements of factual and legal causation.

(b) - Some candidates did not apply the elements in detail.

2(c) - Many candidates did not identify key issues in sufficient detail (the circumstances under which the victim may or may not break the chain of causation).

(d) - Many candidates did not explain the circumstances under which medical intervention could break the chain of causation.

Question 3(a) - Generally, well answered.

(b) - Some candidates did not identify or apply key elements of the offence of gross negligence manslaughter. Those candidates who did not explain the law in sufficient detail were then unable to apply the law accurately.

Scenario 3

Question 1(a)

Many candidates identified some of the elements of the term 'property', but did not mention enough to score well (e.g. 'tangible' property/ 'things in action' – these are important legal terms).

(b) - Generally well answered.

Question 2(a)

Many candidates did not separate out the two parts of the defence (i.e. intention/recklessness as to destroy/damage property belonging to himself or another.....and intention/recklessness as to the endangerment of life by means of the damage/destruction).

(b) - Because some candidates did not fully explain the elements of aggravated criminal damage (in Q2(a)) they did not then apply the elements in sufficient detail.

2(c) - Many candidates were not detailed enough in their explanation of intoxication.

(d) - Because some candidates did not fully explain the elements of intoxication (in Q2(c)) they did not then apply the elements in sufficient detail.

Question 3(a) - Some candidates did not explain the elements of the defence of self-defence in detail.

(b)

This was the least popular question. Because some candidates did not fully explain the elements of self-defence (in Q3(a)) they did not then apply the elements in sufficient detail. Once again, it is often the lack of identification and application of elements of offences, together with relevant case law – where candidates could improve.

SUGGESTED POINTS FOR RESPONSE

LEVEL 3 UNIT 3 – CRIMINAL LAW

SECTION A

Question Number	Suggested Points for Responses	Marks (Max)
1	<ul style="list-style-type: none"> - Conduct - Circumstances - Consequences - Acts or omissions 	3
Question Number	Suggested Points for Responses	Marks (Max)
2	<ul style="list-style-type: none"> - Intention to commit the completed/full crime - Intention can be direct (1) or oblique/indirect - Recklessness as to any circumstances if sufficient for full offence 	2
Question Number	Suggested Points for Responses	Marks (Max)
3	<ul style="list-style-type: none"> - Section 1 Criminal Damage Act 1971 - Criminal damage, simple or aggravated that is committed by fire - Destroy or damage to property by fire <p>Case law e.g. <u>Hunt</u> (1997), <u>R v G</u> (2003) <u>R v Drayton</u>[2005] <u>R v Goodfellow</u>[1986]</p>	3
Question Number	Suggested Points for Responses	Marks (Max)
4	<ul style="list-style-type: none"> - Malice aforethought - Intention to kill or - Intention to cause GBH/really serious harm 	3
Question Number	Suggested Points for Responses	Marks (Max)
5	<ul style="list-style-type: none"> - The defence comes under s5 Criminal Damage Act 1971 - There must be a belief in consent to the damage being caused or - a belief that the property was in immediate need of protection and - The means of protection were reasonable in the circumstances - Mention of a case e.g. <u>Denton</u>[1982], <u>Chamberlain v Lindon</u> [1998] 	4
Question Number	Suggested Points for Responses	Marks (Max)
6	<ul style="list-style-type: none"> - Causing death by dangerous driving (S1 RTA 1988) - Causing death by careless/inconsiderate driving (1) (S2B RTA 1988 as amended by RSA 2006) - Causing death by careless/inconsiderate driving while under the influence of drink or drugs (S3A RTA 1988) - Causing death by driving while unlicensed/disqualified/uninsured (S21 RSA 2006) - Act/Section/Year not needed for the mark(s) 	3



Question Number	Suggested Points for Responses	Marks (Max)
7	<ul style="list-style-type: none"> - Mens rea element of theft - Section 6 of Theft Act 1968 - Intention to treat the thing as his own, to dispose of regardless of others rights - Borrowing can amount to theft - Cases can include <u>Lloyd</u> (1985), <u>Velumyl</u> (1989) 	3
Question Number	Suggested Points for Responses	Marks (Max)
8	<ul style="list-style-type: none"> - Appropriation - Property - Belonging to another 	3
Question Number	Suggested Points for Responses	Marks (Max)
9	<ul style="list-style-type: none"> - Must be a mistake of fact - Cannot be a mistake of law - Mistake must be genuine/honest - Mistake need not be reasonable 	3
Question Number	Suggested Points for Responses	Marks (Max)
10	<ul style="list-style-type: none"> - Exception to the rule that all crimes must have AR and MR - No MR requirement - Provide appropriate example e.g. certain health and safety offences, food and pharmaceutical products, sale of alcohol, trade descriptions, road traffic offences, pollution, etc. 	3
Section A Total: 30 marks		

Section B - Scenario 1

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<ul style="list-style-type: none"> - Theft or s.1 Theft Act 1968 - Appropriation - Property - Belonging to another - Dishonesty - Intention to permanently deprive 	6
1(b)	<ul style="list-style-type: none"> - Bob has appropriated the hammer - The hammer is property - The hammer belongs to another - Bob is dishonest under the Ghosh (1982) test (as modified by Ivey (2017), applied in Barton and Booth (2020) - None of the exceptions in s2 TA 1968 apply - Bob intends to permanently deprive 	4
Question 1 Total: 10 marks		



Question Number	Suggested Points for Responses	Marks (Max)
2(a)	<ul style="list-style-type: none"> - Aggravated criminal damage as per s.1(2) Criminal Damage Act 1971 - The property may belong to the defendant or another - Intention or recklessness - Destroys or damages property - Intends to endanger the life of another by means of the damage - Is reckless as to whether the life of another is endangered by means of the damage - Case e.g. Steer (1987); Wenton (2010) 	6
2(b)	<ul style="list-style-type: none"> - Paul has damaged the brake cable - Paul intended to damage the cable - The property belongs to Kevin - Paul either intends or is reckless as to endangering life - By means of the damage 	4

Question 2 Total: 10 marks

Question Number	Suggested Points for Responses	Marks (Max)
3(a)	<ul style="list-style-type: none"> - Basic criminal damage under s.1 Criminal Damage Act 1971 - Must be damage or destruction - Damage need not be permanent but needs time and money spent on repairs - Case e.g. Morphy v Salmon (1990)/ Hardman v CC Avon and Somerset (1986) Roper v Knott[1898] - Property must belong to another - Intention or recklessness 	6
3(b)	<ul style="list-style-type: none"> - Bob intends to damage/destroy the window - The window is property which belongs to another - the neighbour - The window is damaged or destroyed - The window will take time and money to repair 	4

Question 3 Total: 10 marks

Question Number	Suggested Points for Responses	Marks (Max)
4(a)	<ul style="list-style-type: none"> - Constructive or unlawful act manslaughter - Must be an unlawful act/crime - The act must cause the death - The unlawful act must be objectively dangerous - The act need not be aimed at the person - The risk of harm must be physical - D must have MR of the unlawful act - Case e.g. Franklin (1883) Church (1965) Lamb[1967] 	6



4(b)	<ul style="list-style-type: none"> - Paul disconnecting the brake cable is criminal damage which is an unlawful act - Paul's action is objectively dangerous - D had MR (intent) to cause damage - There is risk of physical harm - The neighbour has died - There is causation 	4
Question 4 Total: 10 marks		
Scenario Total: 40 marks		

Section B - Scenario 2

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<ul style="list-style-type: none"> - D potentially liable for gross negligence manslaughter - Generally, no duty to act but duty arises in following categories: State one or more of categories where duty arises: Statutory duty; Special relationship; Contractual duty; Assumption of responsibility; Creating a dangerous situation; Public office - Breach of that duty - Conduct can be an act or omission - Must be risk of death - Breach must have caused death - Breach must be so bad as to deserve criminal punishment (i.e. grossly negligent) - D does not have to foresee death or bodily harm (it is an objective test) - Case: e.g. Adomako (1994); Bateman (1925) 	7
1(b)	<ul style="list-style-type: none"> - Duty existed - Contractual and/or statutory duty - Case e.g. : Pittwood (1902), Yaqoob (2005) - Duty breached: falling asleep while driving and responsible for passengers - Created risk of death by driving the train tired - He was aware of the risk - Caused death: the passengers died because of the crash - Grossly negligent objective standard 	5
Question 1 Total: 12 marks		

Question Number	Suggested Points for Responses	Marks (Max)
2(a)	<ul style="list-style-type: none"> - Factual and legal causation must be established to find liability for result crimes - But for test for causation in fact - Case: e.g. White (1910); Pagett (1983) - Legal causation means D's act had to be significant/substantial and operating cause of death - Does not need to be sole cause of death - Must be more than minimal - There must be no intervening act/break in the chain - Case, might include Smith (1959); Cheshire (1991) Blaue[1975] 	6
2(b)	<ul style="list-style-type: none"> - Chain of causation may be broken by an intervening act - Refusal of medical treatment/ aggravation of injuries by V - Must take victim as find him/Thin skull rule - Injuries sustained during escape - Negligent or poor medical treatment, generally does not break the chain - Case: e.g. Blaue (1975); Jordan (1956); Kennedy[2009] 	6
2(c)	<ul style="list-style-type: none"> - Victim interventions can break the chain of causation - If reasonable and foreseeable, do not break the chain of causation - Victim has the right to refuse treatment and this will not break the chain of causation - Thin skull rule applies here - 'Take your victims as you find them' - Victim is a whole person so religious and other beliefs akin to pre-existing medical condition - Apply to scenario: If Jehovah's witness refuses blood transfusion, chain of causation is not broken 	4
2(d)	<ul style="list-style-type: none"> - Negligent medical treatment does not normally break the chain of causation - Not same rules as for other intervening events - Negligent medical treatment would have to be 'so independent of D's acts and in itself so potent in causing death' - Negligent medical treatment can break the chain in exceptional cases where action palpably wrong (e.g. <u>Jordan</u> (1956)) - Students can argue that the chain of causation was or was not broken based on facts 	4
Question 2 Total: 20 marks		

Question Number	Suggested Points for Responses	Marks (Max)
3(a)	<ul style="list-style-type: none"> - D liable for involuntary manslaughter - Manslaughter by gross negligence - Generally, no duty to act but duty arises in certain categories e.g. special relationship and public office 	2
3(b)	<ul style="list-style-type: none"> - Duty of care existed - Special relationship as husband and wife - Case: e.g. Gibbins and Proctor (1918) - Public office duty as a doctor - Case: e.g. Dytham (1979) - Breach of duty by not giving medicines - Breach caused the death - Objectively, the breach was grossly negligent - D does not have to foresee death or bodily harm (it is an objective test) - Case for objective standard: e.g. Adomako (1994) 	6
Question 3 Total: 8 marks		
Scenario Total: 40 marks		

Section B - Scenario 3

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	1 S4 Theft Act 1968 defines property 2 Money 3 And all other property 4 Real or personal 5 Including things in action 6 And other tangible property	5
1(b)	<ul style="list-style-type: none"> - Wild flowers do not amount to property - Must be for sale/commercial purposes for theft - They are not picked for sale/commercial purpose - Martin is not guilty of theft 	3
Question 1 Total: 8 marks		
Question Number	Suggested Points for Responses	Marks (Max)
2(a)	1 The offence is aggravated criminal damage 2 S1(2) Criminal Damage Act 1971 3 D intentionally or recklessly 4 Destroys property belonging to himself or another 5 D must intend or be reckless as to endangering life 6 By means of the criminal damage 7 Case e.g. Steer(1987)) Wenton(2010) 8 Life does not actually have to be endangered	6
2(b)	<ul style="list-style-type: none"> - Shamina has intentionally caused damage to the tyre - The tyre belongs to another (Patrick) - Potential danger to life comes from the damage to the tyre 	4

	-Shamina has at least been reckless as to whether life might be endangered when the motorbike is driven - Shamina is aware of the risk	
2(c)	1 The defence Shamina may try to use is intoxication 2 Intoxication may negate the mens rea 3 Voluntary intoxication is only a defence to specific intent crimes 4 Specific intent crimes are ones that can be proven by intent alone 5 Basic intent crimes can be proven by the mens rea of intent or recklessness 6 If the crime is basic intent then voluntary intoxication is not a defence 7 Becoming intoxicated is considered reckless in itself 8- Involuntary intoxication can be a defence to basic intent and specific intent crimes 9 All forms of criminal damage are basic intent crimes 10 Case e.g Majewski (1977), Lipman (1970) Kingston[1994]	8
2(d)	- Shamina is voluntarily intoxicated - Voluntary intoxication is itself considered to be a reckless act - (Aggravated) criminal damage is a basic intent crime - Voluntary intoxication is no defence to crime of basic intent	4
Question 2 Total: 22 marks		
Question Number	Suggested Points for Responses	Marks (Max)
3(a)	1 Self defence 2 Under 76 Criminal Justice and Immigration Act 2008 3 The use of force must be necessary 4 Based on the facts as the defendant honestly believed them to be 5 Defendant may use reasonable force 6 To protect himself, another or property 7 Excessive or disproportionate force is not reasonable 8 Case e.g. Palmer (1971), Clegg (1995), Martin (2000) 9 Honest and instinctive self defence is strong evidence that force is reasonable	5
3(b)	1 Martin believed that the use of force was necessary 2 Based on the facts as he believed them to be 3 The amount of force used is judged objectively 4 The first punch may be considered reasonable force 5 In order to protect himself 6 Subsequent force used (in banging Patrick's head on the ground) may be considered excessive 7 The defence of self-defence is likely to fail	5
Question 3 Total: 10 marks		
Scenario Total: 40 marks		