



## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

NOVEMBER 2023

LEVEL 3 UNIT 3 – CRIMINAL LAW

### 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 November 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 candidates occasionally provided answers which were too brief (e.g. Q8, in relation to 'attempts').

For Section B, a thorough knowledge and understanding of the law was essential to then progress and apply the law. 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.

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.

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** Some candidates did not identify the concept of a 'continuing act'.

**Question 2** Some candidates did not give sufficient detail (e.g. 'unjustified risk taking').

**Question 3** Generally, well answered.

**Question 4** Some candidates erroneously provided detail of 'factual causation' instead of the required 'legal causation'.

**Question 5** Generally well answered.

**Question 6** Often, candidates did not identify all three occasions under s2 Theft Act 1968. Candidates erroneously stated that 'reasonable steps' must be taken to try and discover who the property belongs to.

**Question 7** Candidates often provided detail of the reasons for the imposition of Strict Liability offences, when the question asked for factors which determine SL offences.

**Question 8** Some candidates erroneously gave details of the mens rea (the question asked for actus reus elements – of attempts).

**Question 9** Oftentimes, candidates were not accurate in their identification of the elements of the partial defence of 'loss of control'.

**Question 10** Generally, well answered.

### SECTION B

#### Scenario 1

#### Question 1(a)

This tested the candidates' ability to identify the offence of unlawful act manslaughter and its constituent elements. Candidates often struggled with this question.

#### (b)

Because of the aforementioned struggle to identify the offence or to identify it in sufficient detail, a number of candidates were not able to apply the offence in this section.

(c) Often, candidates did not identify causation in fact/law in sufficient detail.

**Question 2(a)** Most candidates identified the offence of murder, and its constituent elements, although some candidates incorrectly applied the law in this section.

**(b)** Generally, well answered.

### **Question 3**

Both diminished responsibility and loss of control were considered as partial defences, although one was more likely to be a successful defence given the facts. Many candidates did not explain or apply the law in sufficient detail to do well to either or both potential defences. The absence of case law in some answers was noticeable.

### **Scenario 2**

This was the most popular question attempted by candidates. The absence of case law in some answers was noticeable.

**Question 1(a)** Generally, well answered.

**(b)** Generally, well answered.

**Question 2(a)** Generally, well answered. Some candidates did not identify s1 Theft Act 1968.

**(b)** Generally, well answered.

**(c)** When answered poorly, candidates did not identify either the statutory exceptions in S2 Theft Act 1968, or the principle of the Ghosh[1982] test (as amended). Similarly, some candidates did not identify the mens rea element of 'intention to permanently deprive'.

**Question 3(a)** Many candidates did not explain the offence of arson by means of 'basic' criminal damage in sufficient detail.

**(b)** Many candidates did not apply key elements of the offence of 'basic' criminal damage by fire.

**Question 4** Candidates who struggled with this question did not identify the detail needed to explain the defence of intoxication and could therefore not apply the defence in sufficient detail.

### **Scenario 3**

**Question 1(a)** Some candidates incorrectly identified the offence as theft (it should be attempted theft).

**(b)** Because some candidates incorrectly identified the offence as theft, they then did not apply the elements of attempted theft.

**Question 2(a)** Most candidates correctly identified the defence as that of self-defence, but then failed to explain the elements of the defence in sufficient detail.

**(b)** Because some candidates did not fully explain the elements of self-defence (in Q2(a)) they did not then apply the elements in sufficient detail to obtain full marks. However, most candidates scored fairly well.

**Question 3(a)** Some candidates did not explain the elements of the offence of aggravated criminal damage (by fire).

**(b)** Because some candidates did not fully explain the elements (in Q3(a)) they did not then apply the elements in sufficient detail.

**3(c)** Candidates did often not explain the elements of the defence of Duress (by threats) in sufficient detail to score well. Candidates could improve scores by detailed identification and application of elements of offences, together with relevant case law.

### SUGGESTED POINTS FOR RESPONSE

NOVEMBER 2023

LEVEL 3 UNIT 3– CRIMINAL LAW

#### SECTION A

Question Number	Suggested Points for Responses	Marks (Max)
1	<ul style="list-style-type: none"> <li>Both elements must be present at the same time</li> <li>They do not need to be present throughout</li> <li>The concept of a continuing act</li> <li>E.g. case <i>Thabo Meli</i> (1954), <i>Fagan v MPC</i> (1969)</li> </ul>	3
2	<ul style="list-style-type: none"> <li>Unjustified conscious risk taking</li> <li>Also known as basic intent offences</li> <li>Has to be subjective recklessness</li> <li>E.g. <i>R v G</i> (2003)</li> </ul>	3
3	<ul style="list-style-type: none"> <li>Unlawful killing</li> <li>Of a human being</li> <li>Within the /King's/Queen's Peace</li> </ul>	3
4	<ul style="list-style-type: none"> <li>Essential in finding liability for result crimes</li> <li>Defined as 'operating' and 'substantial cause'</li> <li>Thin skull rule</li> <li>Cases can include <i>Dalloway</i> (1847) <i>Pagett</i> (1983); <i>Cheshire</i> (1991), <i>Blaue</i> (1975)</li> </ul>	2
5	<ul style="list-style-type: none"> <li>1 Intention or</li> <li>2 Recklessness</li> <li>3 as to the destruction or damage of property</li> </ul>	3



Question Number	Suggested Points for Responses	Marks (Max)
6	<ul style="list-style-type: none"> <li>• D believes in law he has the right to deprive the V of the property</li> <li>• The D believes would have the V's consent if V knew of the appropriation</li> <li>• D believes the person to whom the property belongs cannot be discovered by taking reasonable steps</li> </ul>	3
7	<p>Any two of the following:</p> <ul style="list-style-type: none"> <li>• The severity of the punishment</li> <li>• If the offence only applies to specific members of the public/those engaged in a specific activity</li> <li>• If an offence is related to issues of social concern</li> <li>• If it promotes greater vigilance</li> </ul>	2
8	<ul style="list-style-type: none"> <li>• An act which must be more than merely preparatory</li> <li>• an act, not an omission</li> <li>• To the commission of an indictable offence</li> <li>• Mention a case; might include <u>Jones (1990)</u>, <u>Campbell (1991)</u></li> </ul>	4
9	<ol style="list-style-type: none"> <li>1. Loss of control comes under s54 Coroner's and Justice Act 2009</li> <li>2. There must be a loss of control</li> <li>3. It must be because of a fear of serious violence from the victim against the defendant or another identified person or</li> <li>4. Things said or done of an extremely grave character</li> <li>5. And which gives the defendant a justifiable sense of being wronged and</li> <li>6. A person of the defendant's sex/age with a normal degree of tolerance and self-restraint And in the circumstances of the defendant, might have acted in the same or similar way</li> </ol>	5
10	<ul style="list-style-type: none"> <li>• Duress by threats</li> <li>• Duress by circumstances</li> </ul>	2
<b>Section A Total: 30 marks</b>		

### Section B - Scenario 1

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<ol style="list-style-type: none"> <li>1 Involuntary manslaughter namely unlawful act manslaughter/constructive</li> <li>2 There needs to be an unlawful act</li> <li>3 Which is a crime</li> <li>4 An omission is not sufficient</li> <li>5 The act needs to be objectively dangerous</li> <li>6 The defendant's action(s) must cause the death</li> <li>7 There must be no intervening act/No break in the chain of causation</li> <li>8 Case e.g. Franklin (1883), Lamb (1967), Church (1965)</li> </ol>	6



Question Number	Suggested Points for Responses	Marks (Max)
1(b)	<ul style="list-style-type: none"> <li>Alan has committed an illegal act by putting lighted paper through the letterbox</li> <li>Alan's actions are objectively dangerous</li> <li>There was a risk of some harm to Rachel</li> <li>Rachel has died</li> <li>Conclude that the offence appears to be complete</li> </ul>	4
1(c)	<ol style="list-style-type: none"> <li>Causation in fact</li> <li>'But for' test is satisfied</li> <li>Case e.g. White(1910), Pagett(1983)</li> <li>Causation in law</li> <li>D's action need not be the sole cause</li> <li>Must be an operating and substantial cause/make a significant contribution</li> <li>Case e.g. Smith (1959), Cheshire (1991)</li> <li>There must be no break in the chain of causation/No intervening act</li> <li>Case e.g. Blaue (1975), Mellor (1996)</li> <li>The fireman's actions did not break the chain</li> <li>Alan started the fire and made a significant contribution to Rachel's death</li> <li>Conclusion that Alan caused the death</li> </ol>	10
<b>Question 1 Total: 20 marks</b>		
2(a)	<ol style="list-style-type: none"> <li>Murder</li> <li>Unlawful killing</li> <li>Of a human being</li> <li>During the Queen's peace</li> <li>With malice aforethought</li> <li>Intention to kill or</li> <li>Intention to cause GBH/really serious bodily harm</li> </ol>	6
2(b)	<ul style="list-style-type: none"> <li>Tamzin has unlawfully been killed</li> <li>Tamzin is a human being</li> <li>It happened during the King's peace</li> <li>Bob intended to kill her</li> <li>It is more of a direct intention (aim or purpose)</li> </ul>	4
<b>Question 2 Total: 10 marks</b>		

Question Number	Suggested Points for Responses	Marks (Max)
3	<ol style="list-style-type: none"> <li>1 Diminished responsibility under s.52 Coroners and Justice Act 2009</li> <li>2 There needs to be an abnormality of mental functioning</li> <li>3 Arising from a recognised medical condition</li> <li>4 Which substantially impaired Bob's ability to understand his conduct</li> <li>5 or forming a rational judgement</li> <li>6 or to exercise self-control</li> <li>7 It provides an explanation for Bob's actions</li> <li>8 In the sense of being a cause/contributory factor</li> <li>9 The burden of proof lies on the defendant</li> <li>10 If successful Bob will be convicted of voluntary manslaughter</li> <li>11 Case e.g. <u>Byrne (1960)</u>, <u>Haddon (2003)</u>, <u>Golds (2016)</u></li> <li>12. Loss of control could be a partial defence also</li> <li>13. Loss of control is unlikely to be successful given the facts.</li> </ol>	10
<b>Scenario 1 Total: 40 marks</b>		

### Section B - Scenario 2

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<ol style="list-style-type: none"> <li>1 Basic criminal damage</li> <li>2 S. 1(1) of Criminal Damage Act 1971</li> <li>3 Without lawful excuse</li> <li>4 Destroys or damage</li> <li>5 Property</li> <li>6 Belonging to another</li> <li>7 Must have intention or be reckless</li> <li>8 as to the destruction/damage</li> <li>9 It does not have to be irreparable (Hardman(1986))</li> </ol>	6
1(b)	<ul style="list-style-type: none"> <li>• Smashing the speakers would be damage / destruction</li> <li>• Speakers are property</li> <li>• Belonged to another - residents of number 13</li> <li>• He had no lawful excuse</li> <li>• He had intent to do so</li> </ul>	4
<b>Question 1 Total: 10 marks</b>		



Question Number	Suggested Points for Responses	Marks (Max)
2(a)	<ol style="list-style-type: none"> <li>1 Theft S1 of the Theft Act 1968</li> <li>2 Dishonestly</li> <li>3 Appropriates</li> <li>4 Property</li> <li>5 Belonging to another</li> <li>6 Intention to permanently deprive</li> </ol>	6
2(b)	<ul style="list-style-type: none"> <li>• The lights are property</li> <li>• Belonging to another, belonged to residents at number 13</li> <li>• He took and hid them- assumed rights of the owner - amounting to appropriation</li> <li>• D fulfilled the actus reus of the offence</li> </ul>	3
2(c)	<ol style="list-style-type: none"> <li>1 Negative definition/what dishonesty is not in s.2 of Theft Act 1968 does not apply</li> <li>2 Ghosh (1982) test now replaced by test from Ivey v Genting Casinos 2017/Barton and Booth (2020)</li> <li>3 Must ascertain –subjectively – the actual state of the D’s knowledge/belief of the facts</li> <li>4 Second part of test: Were the actions dishonest by the objective standards of ordinary decent people?</li> <li>5 Did Jon have intention to permanently deprive at the time of offence</li> <li>6 Borrowing does not amount to IPD unless all the value and goodness of the item is gone (1)</li> <li>7 Case e.g., Lloyd (1985), Velymyl (1989)</li> <li>8 As he planned to return them on Monday, he did not have the mens rea for theft</li> </ol>	6
<b>Question 2 Total: 15 marks</b>		
3(a)	<ol style="list-style-type: none"> <li>1 Victoria might be charged with arson</li> <li>2 Section 1(3) Criminal Damage Act 1971</li> <li>3 simple/basic or aggravated damage that is committed by fire</li> <li>4 Destroy or damage</li> <li>5 Property belonging to someone else</li> <li>6 Mens rea is intention or recklessness</li> <li>7 Case e.g. Hunt (1997), R v G (2003)</li> </ol>	6
3(b)	<ol style="list-style-type: none"> <li>1 Damage to the shed was by fire</li> <li>2 The shed belonged to someone else</li> <li>3 The damage does not have to be irreparable</li> <li>4 The damage was committed recklessly</li> <li>5 The test is subjective</li> <li>6 Conclusion that all of the elements of basic criminal damage by fire are present</li> </ol>	5
<b>Question 3 Total: 10 marks</b>		



Question Number	Suggested Points for Responses	Marks (Max)
4	<ul style="list-style-type: none"> <li>• Voluntary intoxication is a possible defence (1)</li> <li>• Voluntary intoxication is only defence to specific intent offences</li> <li>• Basic intent offences are those where proof recklessness is sufficient</li> <li>• Voluntary intoxication is not a defence to basic intent offences (</li> <li>• Criminal damage is a basic intent crime therefore Victoria cannot rely on the defence</li> <li>• Victoria cannot rely on the defence as voluntary intoxication is considered as a reckless act in itself</li> <li>• Case e.g. Lipman (1970); Majewski (1976)</li> </ul>	4
<b>Scenario 2 Total: 40 marks</b>		

### Section B - Scenario 3

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<ol style="list-style-type: none"> <li>1 The offence is attempted theft (</li> <li>2 S1(1) Criminal Attempts Act 1981)</li> <li>3 It requires proof that the defendant did an act which is more than merely preparatory</li> <li>4 Case (e.g. Boyle and Boyle(1987), Tosti and White (1997), Jones (1990) - or any other relevant case</li> <li>5 In relation to an indictable offence [which includes either-way offences]</li> <li>6 With intent to commit the offence [e.g. Khan (1990)]</li> </ol>	5
1(b)	<p>Application of the offence of attempted theft</p> <ol style="list-style-type: none"> <li>1 Imani did an act - she went down the alleyway/pulled the tarpaulin</li> <li>2 in relation the offence of theft– which is an indictable offence (</li> <li>3 It was more than merely preparatory – Imani was sufficiently close to committing the full offence to be considered as attempting it</li> <li>4 Imani intended to commit the offence of theft</li> <li>5 Conclude that the offence of attempted theft is complete</li> </ol>	5
<b>Question 1 Total:10 marks</b>		

Question Number	Suggested Points for Responses	Marks (Max)
2(a)	<p>Identification of the defence of self-defence:</p> <ol style="list-style-type: none"> <li>1 There is a potential defence of self-defence</li> <li>2 A complete defence if successful</li> <li>3 Jane may use reasonable force to protect herself</li> <li>4 Or protect property or prevent crime</li> <li>5 The use of force must be necessary - a subjective test</li> <li>6 In relation to the facts as they were (or the defendant believed them to be)</li> <li>7 It must be an honest belief</li> <li>8 The use of force must be proportionate - an objective test</li> <li>9 Mention of relevant case law e.g. Clegg(1995), Martin(2000)</li> </ol>	6
2(b)	<p>Application of the defence of self-defence:</p> <ol style="list-style-type: none"> <li>1 Liz may be able to use the defence of self-defence by claiming she was protecting herself</li> <li>2 She believed it was necessary to use force</li> <li>3 It was an honest belief/reasonably held</li> <li>4 In relation to the belief that she was going to be attacked</li> <li>5 The amount of force used appears to be proportionate in the circumstances</li> <li>6 A conclusion that the defence is likely to be successful</li> </ol>	4
<b>Question 2 Total: 10 marks</b>		
3(a)	<ol style="list-style-type: none"> <li>1 Aggravated Criminal Damage</li> <li>2 Section 1(2) of Criminal Damage Act 1971</li> <li>3 Destroys or damages property</li> <li>4 belonging to themselves or another</li> <li>5 Without lawful excuse</li> <li>6 Intention or recklessness as to damage to property</li> <li>7 Intends to endanger life/the life or another through the damage or</li> <li>8 Is reckless as to whether life of another is endangered</li> <li>9 Life does not actually have to be endangered</li> <li>10 As the damage is by fire, it is arson</li> <li>11 Case e.g. Webster[1995], Warwick[1995]</li> </ol>	6
3(b)	<ul style="list-style-type: none"> <li>• By setting fire to the house Imani damages property</li> <li>• No lawful excuse</li> <li>• Damages/destroys the house (property)</li> <li>• as the intention to damage/destroy it</li> <li>• At least has the recklessness as to whether life may be endangered thereby</li> <li>• Conclusion that aggravated criminal damage by fire has been committed</li> </ul>	4

Question Number	Suggested Points for Responses	Marks (Max)
3(c)	<p>Identification and application of the defence of duress by threats</p> <ol style="list-style-type: none"> <li>1 Imani may be able to use the defence of duress</li> <li>2 It is duress by threats</li> <li>3 To be successful, it must be shown that the defendant has not been at fault in associating with a group whom she knew might put pressure on her to commit an offence</li> <li>4 This element may not satisfied in this case</li> <li>5 Case e.g. Sharp (1987), Heath(2000), Hasan(2005)</li> <li>6 The defendant’s will must have been overborne by the threat of death or serious injury</li> <li>7 This element may be satisfied in Imani’s circumstances</li> <li>8 It is a subjective test</li> <li>9 The threat must be against the defendant / or for someone whom the defendant regards themselves as reasonably responsible for (as per the current circumstances) (Shayler(2001)</li> <li>10 The threat must be imminent, as per the circumstances here (Hudson and Taylor(1971)</li> <li>11 It must be made with the purpose of compelling the defendant to commit a particular type of crime – as in this case</li> <li>12 A sober person of reasonable firmness sharing the characteristics of the defendant, would have responded as the defendant did – here the element may or may not be satisfied</li> <li>13 Case e.g. Graham (1982), Bowen (1996), Rogers (1999)</li> <li>14 A conclusion that the elements may or may not be satisfied</li> </ol>	10
<b>Question 3 Total:20 marks</b>		
<b>Scenario 3 Total: 40 marks</b>		