

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

LEVEL 3 - UNIT 11 - CRIMINAL LITIGATION

JUNE 2022

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 2022 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

The numbers for this examination were relatively low but that is to be expected as this qualification is nearing the end of its life. This cohort comprised some excellent candidates who have a very sound understanding of criminal litigation. These candidates scored very highly overall and across the various questions. It appeared that these candidates were well prepared and had engaged with previous examiner reports and exam papers. Unfortunately, there is also evidence in this cohort that there are a substantial number of candidates who do not understand the fundamentals of criminal litigation and who struggled with even the most basic of questions.

Exam questions need to be read carefully to ensure that marks are maximised. Candidates need to understand what is required of them. Where candidates failed to maximise marks, it was mainly because they did not understand the procedure and/or lacked the detail to provide full answers, rather than any confusion as to what the question was asking.

The online format of the examinations means that all scripts are legible however there were a number of papers which were poorly written in terms of spelling and grammar. Candidates are reminded to proof-read their work before they submit to ensure that they have communicated their answers effectively and clearly. Please do try to ensure each statute is written in full the first

time such as Police and Criminal Evidence Act 1984. Generally, candidates did well with knowing the relevant Acts and section numbers which was pleasing to see.

Overall, the Chief Examiner was impressed with the level of performance in this examination. Candidates showed a sound knowledge of issues concerning arrest, search and detention as assessed in question 1. It should be noted that where a question asks about the lawfulness of the arrest, candidates should consider both section 24 Police and Criminal Evidence Act 1984 (PACE 1984) and s28 PACE. The application style questions were done well by most candidates, showing good preparation in respect of, and engagement with, the CSM.

An area which caused some difficulty seemed to be around the operation of the ECHR. Question 2ai and 2aii required candidates to identify ECHR article rights triggered by events in the CSM, specifically arrest and search. Candidates were specifically asked to identify “the most relevant”. This involved an exercise in judgement. Some candidates were able to cite Article 5 plus an appropriate outline/description of that right for 2ai and Article 8 for 2aii. Many candidates seemed to struggle though. Some did not offer any article right, some cited Article 6 which was not the most relevant for either arrest or search. Many cited Article 3 for the search but this would not be the most relevant for a search simply in public requiring the removal of outer clothing plus footwear.

Some areas which have proved challenging for candidates in previous examinations such as disclosure and statutory provisions relating to exclusion of evidence, ie sections 76, 78 and 82 PACE 1984, were generally done to a reasonably good standard by the majority of candidates in this examination.

Question 3 proved most challenging for most candidates. This was perhaps to be expected as some of the questions posed assessed aspects of commonly assessed topics such as bail and allocation, but via questions not commonly encountered. Two notable examples are questions 3a and 3b. Question 3a sought a description of the procedure at a bail hearing. This is a straightforward question in terms of cognitive difficulty, but many candidates failed to pick up many of the marks. This suggested that many had not covered this in their exam preparation. The application question relating to bail (3b) was generally done to a better standard. The Chief Examiner was pleasantly surprised by this as it was anticipated that this question may have proved challenging as it required candidates to offer a reasoned judgement. Many candidates rose to the challenge and provided a well-reasoned view.

Question 3d possibly proved to be the most challenging on the paper. This is to be expected as it is not a commonly posed question. Allocation forms part of the unit specification and is always assessed but question 3d asked candidates about the allocation guideline and required a detailed answer to pick up the available marks. Many candidates understood the purpose of allocation but lacked the detailed knowledge of the allocation guideline.

In question 4 many candidates showed a good ability to work with the sentencing guideline extract to offer a reasoned view about likely sentence. This was pleasing to see. The final question, 4d, revealed that many candidates lacked knowledge of appeals. This is an area for continued development in future examinations.



CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a)(i)

Most candidates scored well and picked up the majority of marks. Some candidates did not appreciate the need to include reference to section 28 as well as section 24 PACE 1984. For a full answer candidates needed to explain involvement, necessity and the section 28 points.

(ii) - Most candidates answered the application part of the question, well.

(b)(i) - Most candidates picked up the point and understood the classification of offences.

(ii)

As above, this proved to be an area that most candidates were comfortable with. Some candidates appeared to be using a numerical classification system rather than summary, either way or indictable only.

1(c) - The search question was done well overall and many picked up the majority of the marks.

Question 2(a)(i) and (ii)

Assessed candidate knowledge of human rights and specifically Article rights triggered by events in the CSM. Some candidates did answer correctly but many did not. The question specifically asked for “the most relevant article under the ECHR” rather than “a relevant article right”. This was deliberate in that the question required the candidates to exercise judgement. Several candidates cited Article 6 for 2ai or 2a ii and many cited Article 3 for 2a ii. While these may be relevant generally in the field of criminal litigation, they were not the most relevant for the questions posed in light of the CSM.

(b)

This question assessed knowledge and application relating to detention and was mostly done to a very good standard with many candidates picking up the majority, if not all, of the available marks.

(c)

This question required candidates to identify two provisions but to correctly match them to the relevant description of the provision.

Question 3(a)

Asked for a description of the procedure at a bail hearing. This is a straightforward question in terms of cognition, but many candidates faltered, and this seems to have been as a result of lack of preparation around the procedure.

3(b)

Was anticipated to be a challenging question as it required a judgement plus reasoning in support. Candidates tended to rise to the challenge and offer a well-argued view.

(c) - This question proved to be accessible and most picked up full marks.

(d)

Possibly proved to be the most challenging on the paper for candidates. This is to be expected as it is not a commonly posed question. Allocation is always assessed but candidates were asked about the guidelines rather than other aspects of allocation. Some picked up several of the 7 available marks but many struggled with this question and this will be lack of preparation as with bail hearing procedure.

(e)

Was reasonably well done. It did require application of knowledge and most candidates offered a soundly reasoned view. Marks were awarded for either court, as long as the reasoning supported the choice of court and was backed by the CSM.

Question 4(a)

Proved straightforward with most candidates picking up the mark. Some answers lacked the detail and specifics to gain the mark. Simply stating, for example, that "it is material which has not been used" or words to that effect are too generic and vague to gain the credit. To gain the mark, candidates needed to show some legal knowledge and use appropriate legal terminology such as reference to material gathered during the investigation but not used as part of the prosecution case.

(b)

Revealed that some candidates had prepared for disclosure questions more than others. Some struggled to cite the relevant statutory provision(s) or explain relevant aspects of the disclosure requirement.

(c)

Most candidates showed a good ability to work with the sentencing guideline extract to offer a reasoned view about likely sentence. This was pleasing to see.

(d)

This question revealed that many candidates lacked detailed knowledge of appeals. This is an area for continued development in future examinations.

SUGGESTED POINTS FOR RESPONSE

LEVEL 3 - UNIT 11 - CRIMINAL LITIGATION

Question Number	Suggested Points for Responses	Max Marks
1 (a)(i)	<p>Answers should cover both s24 and s28. s.24 The Police and Criminal Evidence Act (PACE) 1984, involvement in the commission of an offence (1), or reasonable grounds for suspecting involvement in an offence reasonable grounds for believing that the arrest was necessary. Under s.28 PACE 1984 a suspect must be told of the fact of and grounds for the arrest. A suspect must also be cautioned</p>	6
(ii)	<p>Section 24 Reasonable grounds for suspicion of involvement plus reasoning eg matches description or Arrest necessary – credit for any reasons supported by the facts Section 28 This appears to have been the case with Debbie as she was told that she was being arrested and was told it was for criminal damage. caution - which occurred in Debbie’s case.</p>	4
(b)(i)	Criminal damage – EW	1
(ii)	<p>Indictable only Examples could include murder, manslaughter, rape Or Summary only Any example can gain the credit eg common assault</p>	2
1(c)	<p>Search of person upon arrest - s32(1)-(4) PACE 1984 Police officer can search if reasonable grounds for belief that Debbie May present danger to herself or others Concealed on her anything to use to escape custody Concealed on her anything which may be evidence relating to an offence Police can only ask Debbie to remove JOG – not boots</p> <p>Example:</p> <ul style="list-style-type: none"> • Search likely • She may have something on her which may be evidence relating to the offence, eg spray cannister <p>Example: Search not lawful Asked her to remove boots which they are not permitted to do.</p>	
Question 1 Total: 19 marks		



Question Number	Suggested Points for Responses	Max Marks
2(a)(i)	Article 5 right to liberty and security of the person, the right not to be arrested/detained by the police without lawful authority.	2
(ii)	Article 8 Right to respect for private and family life, home and correspondence	2
(b)	Section 40 PACE 1984 First review - six hours after detention is first authorised Thereafter at nine-hourly intervals Review must be undertaken by officer of rank of inspector Independent from the investigation	6
(c)(i)	It could be argued that the confession was obtained by oppression <ul style="list-style-type: none"> • The constant shouting at Debbie • repeating accusations • banging on the table • not getting her a drink and not allowing her a break 	2
(ii)	Under s.76 PACE 1984, a confession can be excluded if obtained by oppression or if it is unreliable because of things said or done. under s.78 PACE 1984 confession evidence may be excluded if the inclusion of it would have an adverse effect on the fairness of the proceedings. Under s.82 PACE 1984 court can exclude evidence where the prejudicial effect outweighs its value	4
(d)	Via the police station advice and assistance scheme Legal Aid, Sentencing and Punishment of Offenders Act 2012. The funding is free Akhil would be attending as a duty solicitor.	3
Question 2 Total: 19 marks		
Question Number	Suggested Points for Responses	Max Marks
3(a)	The defence asks the court to grant bail and the prosecution is asked if there are any objections. If there are no objections, bail is granted. If there are objections, the prosecution makes submissions. The defence counters these submissions. The magistrates make a decision, stating the reasons. There is a possibility of appeal.	4
(b)	Any logical and well- reasoned response to be credited. Example: Likely that Debbie will be granted bail with conditions S4 Bail Act presumption in favour of bail. No substantial grounds for believing that Debbie would fail to surrender No substantial grounds for believing that Debbie would commit an offence while on bail	3



	Possibility that she may interfere with witnesses The risk of witness interference can be mitigated by conditions not to contact or approach Kelvin or Grace or enter Parkhurst drive.	
Question Number	Suggested Points for Responses	Max Marks
3(c)	The purpose is to determine the trial venue, i.e. Magistrates' or Crown Court. This applies to Debbie's case as she is being tried for criminal damage, which is an either way offence.	2
(d)	At an allocation hearing, the guidelines the Magistrates' Court must take into consideration are as follows (effective from 1 March 2016): A case should be tried summarily unless: <ul style="list-style-type: none"> • the outcome would clearly be a sentence in excess of the courts' powers for the offence concerned; • after taking into account personal mitigation; • and any potential reduction for a guilty plea; or • for reasons of unusual legal, procedural or factual complexity, the case should be tried in the Crown Court. An exception is likely to be rare and case specific. The court should bear in mind its power to commit for sentence after trial and may retain jurisdiction notwithstanding that the likely sentence might exceed its powers. All parties should be asked by the court to make representations as to whether the case is suitable for summary trial. The court should refer to definitive guidelines (if any) to assess the likely sentence for the offence The defendant should be warned that he/she could be sent to the Crown Court for sentencing	7
(e)	Likely to be tried in the magistrates' court Only reason it may be tried in Crown is if magistrates think it will likely need a sentence greater than 6 months. This is possible due to her previous convictions for similar offences. It may hinge on her personal mitigation which we know she has – she has recently lost both parents – grieving and drinking as a result but is getting help for that.	3
Question 3 Total:19 marks		
Question Number	Suggested Points for Responses	Max Marks
4(a)	Material generated during the investigation but which will not be used by the prosecution as evidence.	1
(b)	Under s.3 Criminal Procedure and Investigations Act (CPIA) 1996, prosecution must disclose any material not previously disclosed which might reasonably be considered capable of undermining its case. as soon as practicable after the defendant pleads not guilty. If no such material exists, the prosecution must inform defendant. Under s.4 CPIA the prosecution must give the defendant a schedule of all non-sensitive prosecution material. Under s.7 CPIA, the prosecution has a continuing duty to disclose.	3



Question Number	Suggested Points for Responses	Max Marks
4(c)	<p>Determine seriousness with reference to culpability and harm In Debbie’s case there are factors for greater and lesser harm and for medium level culpability Aggravating factors: Under influence of alcohol Previous convictions Mitigating factors Carer for young child Discussion of the significance of the alcohol use being linked to the offending (ie community order with treatment element rather than custody) Candidates to select likely category range. Credit to be awarded for logical suggestions which flow from reasoning. Candidates likely to select: Starting point - High level community order Category range Medium level community order – 9 months’ custody Candidates may conclude that a community order is likely given her drink issues.</p>	6
4(d)	<p>Advise Debbie of one of the possible grounds and routes of appeal available to her if she is dissatisfied with the outcome.</p> <ul style="list-style-type: none"> • Option 1 Crown Court Against conviction (as she was found guilty) and/or sentence As of right Grounds for appeal – matters of fact, law or mixed S108 Magistrates’ Courts Act 1980 OR • Option 2 Divisional Court of the High Court (QB) Procedure – case stated S111 MCA 1980 Point of law – mags acted outside powers or made wrong decision in law 	3

Question 4 Total: 13 marks

