**CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES**

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**LEVEL 6 UNIT 3 – CRIMINAL LAW**

**JUNE 2023**

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**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.

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**CHIEF EXAMINER COMMENTS**

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Overall, this paper was a pleasure to mark. Candidates showed a broad range of understanding of offences and defences and many candidates showed the ability to critically analyse topics. Moving forward, I would suggest the following for future candidates:

1. For section A, ensure you are able to show your understanding of the advantages and disadvantages of the topic in discussion. Whilst it is a skill in itself to be able to define and explain the law, the higher grades were awarded to candidates who were able to provide a balanced argument and conclude or provide an argument that agrees/disagrees with the statement made.
2. Section A answers would benefit from an essay style approach, with an introduction, body and conclusion, with case law to support throughout.
3. When a question asks about the impact of a case on an area of law, it is good practice to provide a timeline of history of the case law/legislation in that area, before discussing its impact.
4. For Section B, adopt a technique such as IDEA (identify, describe, explain, apply) or IRAC (issue, rule, apply, conclusion) for each crime or each defendant/victim. This enables you to correctly identify all aspects of the scenario and not miss anything out.
5. For offences, you must also discuss causation, both factual and legal.
6. For section B, adopt a technique and always conclude your answers with reasons why.

7. A number of candidates discussed offences that were not on the unit specification. Moving forward candidates should focus on the unit specification for revision.
8. There were also some candidates who discussed areas of tort law.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

**Section A**

### Question 1

Learners who chose this question generally did well, although it was one of the harder questions on the paper. Answers were good and showed an understanding of the questions. A common area of improvement throughout all answers was the lack of criticality, a question like this is specifically asking why and how the law was changed, with a conclusion to summarise.

### Question 2

This was a very popular question and in general Candidates did very well in their answers. It is clear Candidates understand the topic of omissions and understand how to explain and discuss the case law associated with it. The one area of improvement in this question is the arguments for and against imposing liability due to an omission or the two approaches to this argument. It would have been great to see further critical discussion here.

### Question 3

This was a less popular than expected but the Candidates who did showed very good understanding of the law on offences against the person. They were able to clearly identify and explain the offences and problems with the current law, however again it would have been good to see further critical discussion, most importantly the criticisms from the Law Commission.

### Question 4(a)

This question was generally answered well, with Candidates showing understanding of key cases where strict liability has been imposed and the reasons why in certain situations. Reasons for and against would have enhanced these answers, using case law to explain their reasoning e.g social responsibility - Callow v Tillstone

### (b)

This question was answered to an excellent standard, with the better answers showing a 'timeline' of the concept of recklessness and how case law has helped its development.

**Section B**

**Question 1**

This was the most popular choice of question and was answered very well by most Candidates. Better answers discussed the offences and defences in a logical order with case law to support throughout. A lot of Candidates missed out one of the partial defences and at times were applied incorrectly; in general terms if the question discusses murder then Candidates are expected to apply the AR/MR of murder before moving on to defences. It is also a good idea to discuss both partial defences and discard one (or both). It is also important to discuss causation, both factual and legal. A small number of Candidates missed out on criminal damage altogether.

**Question 2**

This was another popular question and generally answered well. A small number of Candidates discussed Unlawful Act Manslaughter and murder but the scenario clearly suggests a duty of care and therefore Gross Negligence Manslaughter. Insanity was discussed well. Theft was discussed to an exceptional standard by most Candidates. Additional case law would have enhanced the answers.

**Question 3**

Both burglary and intoxication were discussed to a good standard here and it is clear that Candidates understand the difference between s9(1)(a) and s9(1)(b). The law was applied well throughout. Difficulties arose with the discussion of battery with some Candidates discussing all OAP which was not needed.

**Question 4(a)**

The answers to this question were overall poor, however most Candidates were able to correctly identify, explain and apply the law on assault. Few Candidates realised the scenario was asking for a discussion of s47 ABH, but the Candidates that did discuss this, did very well. Caution could have been discussed further.

**(b)**

Candidates were able to identify, explain and apply GBH and also discuss the difference between s20 and s18. Most Candidates applied this correctly due to the lack of intent from D. Intoxication was discussed to a great standard and it was clear Candidates knew the difference between specific and basic intent. A number of Candidates raised the defence of self-defence.

| Question Number | Suggested Points for Responses | Marks (Max) |
|---|---|---|
| 1 | Responses should include:<br>● Explanation of self defence under section 76 Criminal Justice and Immigration Act 2008<br>● Explanation of the requirement of honest mistake of fact and how this interacts with other defences such as intoxication/self defence<br>● Analysis of case law including but not limited to <u>DPP v Morgan</u> (1976), <u>Oraki v DPP</u> (2018)<br><br>Responses could include:<br>● An explanation of <u>R v Taj</u> (2018) and the outcome of the case<br>● Additional case law to support the points discussed<br>● A detailed academic critique of defences | 25 |
| | | **Question 1 Total:25 marks** |
| Question Number | Suggested Points for Responses | Marks (Max) |
| 2 | Responses should include:<br>● Identification that a failure to act is related to the AR of a crime<br>● Most crimes require a positive act, liability for a failure to act is an exception to the general rule<br>● There is no general duty to act<br>● The two requirements for a crime to be committed by omission<br>● Discussion of the situations when a statutory duty to act may arise<br>● Discussion of the situations when a contractual duty or a duty based on office may arise<br>● Discussion of the situations when a common law duty to act may arise<br>● Discussion of the situations when a duty to act may cease<br>● Case law used as examples throughout<br><br>Responses could include:<br>● A detailed critique of whether there should be a general duty to act<br>● Additional case law to support points discussed | 25 |
| | | **Question 2 Total: 25 marks** |

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| Question Number | Suggested Points for Responses | Marks (Max) |
|---|---|---|
| 3 | Responses should include:<br>● Problems with the Offences Against the Person Act 1861 as it currently stands<br>● OAPA consolidated offences that were already in existence as opposed to creating new offences<br>● No clear hierarchy of offences<br>● Offences spread over two acts (Criminal Law Act/OAPA), illogical sequence<br>● No logical distinction between the maximum sentences e.g ABH and s20 GBH hold a maximum 5 year sentence<br>● Language – old fashioned, complicated and inconsistent<br>● Proposals for reform – a comprehensive new statute, consolidation of current law<br><br>Responses could include:<br>● Additional case law to support the points discussed<br>● Precise and well-structured answers which explore the question in greater depth. | 25 |
| | **Question 3 Total: 25 marks** | |
| Question Number | Suggested Points for Responses | Marks (Max) |
| 4(a) | Responses should include:<br>● Identification that strict liability offence can be common law or statutory offences<br>● Discussion of the presumption of MR in statutory offences<br>● Examples of strict liability<br>● A discussion of the case of Gammon and the strict liability exceptions<br>● Arguments to support strict liability - protection of public, health and safety standards<br>● Arguments against strict liability - unfair on defendant, presumption of MR<br><br>Responses could include:<br>● Additional case law to support the points discussed<br>● A detailed academic critique of strict liability offences | 15 |
| 4(b) | Responses should include:<br>● Recklessness should be defined with reference to subjective and objective recklessness using examples: Cunningham (1957), Caldwell (1982), G and Another (2003).<br>● Discussion of the problems caused by having two tests for recklessness and the confusion this caused.<br>● Reform in this area: the case of R v G and R (2003) which established that all recklessness would be subjective thus | 10 |

| | removing the objective test and clearly defining the concept of recklessness. <br> ● Analysis of <u>R v G and R</u> (2003) including discussion around outcome and impact <br><br>Responses could include: <br> ● Additional relevant case law illustrating principles outlined above. | |
|---|---|---|
| | **Question 4 Total:25 marks** | |

**SECTION B**

| Question Number | Suggested Points for Responses | Marks (Max) |
|---|---|---|
| 1 | Responses should include: <br> ● Definition of actus reus and mens rea of murder <br> ● Identify that the scenario relates to murder <br> ● Discussion of both partial defences - diminished responsibility - s52 Coroners and Justice Act 2009 and loss of control - s54-56 Coroners and Justice Act 2009 <br> ● Application to scenario - DR is a possible defence due to recognised medical conditions. LOC is also possible due to a qualifying trigger of things said or done, however a discussion of the case of Clinton and the sexual infidelity exemption. <br> ● Discussion of thin skull rule in relation to Rizwan <br> ● Discussion of basic criminal damage - s1(1) Criminal Damage Act 1971 - in relation to the shattered window. No defences applicable. <br> ● Case law used as examples throughout <br><br>Responses could include: <br> ● Additional relevant case law illustrating principles outlined above | 25 |
| | **Question 1 Total: 25 marks** | |
| Question Number | Suggested Points for Responses | Marks (Max) |
| 2 | Responses should include: <br> ● Identification of involuntary manslaughter - gross negligence manslaughter <br> ● Discussion of duty of care of Alex towards Ilias, the breach of duty (omission) and discussion of how a competent doctor would have acted. <br> ● Application to scenario - likely to be guilty of GNM <br> ● Identification of the offence of theft with regards to Roberta <br> ● Discussion of sections 1 - 6 Theft Act 1967 <br> ● Application to scenario - likely to be guilty of theft <br> ● Disregard any discussion of burglary | 25 |

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| | Discussion of possible defence of insanity for Alex, no defences for Roberta | |
| | | |

- Discussion of possible defence of insanity for Alex, no defences for Roberta
- Application to scenario
- Case law used as examples throughout

Responses could include:
- Additional relevant case law illustrating principles outlined above

**Question 2 Total: 25 marks**

| Question Number | Suggested Points for Responses | Marks (Max) |
| --- | --- | --- |
| 3 | Responses should include:<br>● Identification of S9(1)(a)/(b) burglary TA 1968<br>● Discussion of building/part of a building, trespasser, intent<br>● Application to scenario - correct identification of s9(1)(a) as Sylvie - discussion as to reasons why - credit s9(1)(b) if students have discussed attempted theft and conditional intention as per A-G's Reference (No.s 1 & 2 of 1979)<br>● Identification of s39 battery - definition<br>● Discussion and application of battery - Gabrielle likely to satisfy this<br>● Identification of defences - intoxication (Sylvie) - none for Gabrielle<br>● Discussion of intoxication - specific intent crime - cannot use dutch courage - likely to be unsuccessful<br>● Case law used as examples throughout<br><br>Responses could include:<br>● Additional relevant case law illustrating principles outlined above | 25 |
| | **Question 3 Total: 25 marks** | |
| Question Number | Suggested Points for Responses | Marks (Max) |
| 4(a) | Responses should include:<br>● Identification of s39 CJA assault - definition<br>● Discussion and application of assault - Celine is likely to satisfy this<br>● Discussion and application of s47 OAPA ABH - psychological harm<br>● Correct conclusion - s47 OAPA ABH with sound reasoning<br>● Case law used as examples throughout<br><br>Responses could include:<br>● Additional relevant case law illustrating principles outlined above | 10 |

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| 4(b) | Responses should include: | 15 |
|---|---|---|
| | • Identification of s20/s18 GBH | |
| | • Discussion and application of s20/s18 GBH - discussion of difference between both offences | |
| | • Likely outcome - s20 GBH however a sound discussion and conclusion/justification of s18 GBH will suffice | |
| | • Identification of novus actus interveniens with regards to the insufficient hospital treatment | |
| | • Discussion as to whether this is the more than minimal cause of the injury | |
| | • Application to the scenario - likely James will be guilty of s20 GBH due to the intervening act of the hospital staff | |
| | • Possible defence of intoxication should be discredited as it was voluntary – discussion of Majewski for justification of s18/s20. | |
| | • Possible defence of self - defence to be credited but discarded due to the lack of imminence of the threat. | |
| | • Case law used as examples throughout | |
| | Responses could include: | |
| | • Additional relevant case law illustrating principles outlined above | |
| | **Question 4 Total: 25 marks** | |