

## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

### LEVEL 6 - UNIT 3 – CRIMINAL LAW

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

#### Essay questions

Generally, essay questions aren't very popular, and they remain, the least preferred option for most candidates overall. This is proven by the fact that of the eight questions on the paper, the top four were all problem questions.

Candidates still seem to be afraid of essay questions, instead of seeing them as a way to express themselves in respect of the subject area. This does not mean that it is acceptable to write everything that they know about an area, but they are not as tied to specific areas as they are with problem questions.

The performance for essay questions this session was worse than recent sessions. The results were that the majority of candidates failed the questions that they attempted. Question 2 was the most popular essay question and the fifth most popular question on the paper. However, question 1 produced the best essay results; those candidates who attempted it, passed it, and passed it well.

The worst performing essay this session was question 2. The least popular essay question which was also the least popular question this session was question 3, which was attempted by only 8 candidates.

### **Problem Questions**

The vast majority of candidates do still prefer problem questions to essays. This is illustrated by the fact that the top four questions on the paper were problem questions with question 2 being the most popular question on the paper. The main issue with problem questions is that candidates seem to want to speculate whether anything and everything in the questions is a reference to an offence. They are still seeing what they want to see and waste a lot of time writing an answer which isn't relevant to the question, or they try to include too much detail in respect of peripheral matters.

Time management or understanding of what was requested improved this session. The majority of candidates did manage to complete four questions which indicates that there wasn't a problem with the amount of information requested in respect of the questions.

There was also a problem this session with a number of candidates not going into enough detail. They should know that for a 25-mark answer (essay and problem questions) that they must write more than between 100 and 350 words.

It cannot be reiterated enough the importance of reading the question paper carefully and following the instructions provided on it.

## **CANDIDATE PERFORMANCE FOR EACH QUESTION**

### **Section A**

#### **Question 1**

This was the 2<sup>nd</sup> least popular essay question this session and the 6<sup>th</sup> least popular overall with 33 candidates attempting it. 21 of the candidates passed it. The question set out that the answer required evaluation in respect of whether the law in relation to non-fatal offences against the person is no longer for purpose and is in need of reform.

Overall, this question was answered very well. Most candidates were able to define common assault, battery and offences under the OAPA 1861, however some totally missed out common assault and battery and just focussed on the more serious offences.

There was some good evaluation, this is evidenced by 5 candidates scoring 20 or over. The main reason for failure of the question was because candidates either just stopped after the definitions or did not write in enough detail for 25 marks.



### **Question 2(a)**

This was the most popular essay question and was attempted by 45 candidates. It seems a lot of candidates view a two-part question as an opportunity to gain more marks than a single part question. The majority of the candidates (35) did really well and passed this part of the question easily. They displayed relevant knowledge in relation to recklessness and, generally, evaluated well. The main reason for failure was candidates going off on a tangent and wasting a lot of time talking about intention, when the question clearly asked about recklessness.

### **(b)**

A number of candidates clearly attempted this question based on their perceived knowledge of part a) as part b) was also not answered well.

There seemed to be some confusion as to what coincidence of the AR and MR was.

That aside, the candidates generally, did not provide enough detail or evaluation in respect of this area.

### **Question 3**

This was the least popular essay question and the least popular question overall. It was noticeable that candidates who failed, failed badly, there weren't many borderline pass/fails.

Most candidates missed the point entirely and just defined the FA with no comparison to previous deception offences or evaluation.

Most answers were also under 325 words which is nowhere near enough detail at this level.

### **Question 4**

This question was the 3<sup>rd</sup> most popular essay question and the 7<sup>th</sup> most popular overall.

There was some discussion about recent tests and potential reform of the area, but no one went through the steps of the development of the AR which is how you get to the recent tests.

Again, not enough detail for a question at this level.

## **Section B**

### **Question 1**

This was the least most popular problem question and the 4th most popular question overall this session. The question was either answered very well or very poorly.

Some candidates identified common assault as the first offence. This was speculation and was not relevant as there was no evidence that Johannes or Dan apprehended immediate unlawful violence.

The next offence was simple criminal damage. Some candidates identified it, others didn't. Those who did identify it did a good job applying it.

Regarding the problem part, some identified murder, others identified UDAM and some identified murder and UDAM to keep their options open. This question was about UDAM based on s20 wounding. The AR for murder was present but there was no direct/indirect intention to cause death or GBH. Curtis is 16 and was scared even though there was no reason to think that Johannes was going to hurt him. He reacted to what he thought was going to happen and may not have realised that stabbing Johannes in the leg could kill him.

Those who identified murder then went on to apply partial defences to murder which were also incorrect. The correct defence was self-defence/mistake.

If the candidates had looked at the complete paper before answering this question, they would have seen that question B3 is totally about murder so it would be unlikely that this question would be about murder too.

## **Question 2**

This question was the most popular problem question and the most popular overall.

Some candidates started by discussing a common assault on Lindsey – there is no evidence whatsoever of this and is pure speculation which doesn't gain marks.

The first offence was Fraud by false representation - s2 FA. Some candidates identified this; others just completely ignored it. Some incorrectly identified s3 failing to disclose information and s11 obtaining services dishonestly.

The next offence was ABH on Aaron. This was generally well handled although some candidates wasted precious time discussing GBH when this obviously wasn't the case.

The next offence was criminal damage by arson. This question was also quite well applied, however, some candidates did explore aggravated criminal damage and endangering life when the signpost was that the bank was shut so there is no reason to think that anyone would be there.

The only relevant defence was intoxication, and this was applied well.

Some candidates answered this Question with 300 words or less. It is not possible to pass a 25 mark question at Level 6 with this level of detail.

## **Question 3(a)**

This was the 3<sup>rd</sup> most popular problem question and the 3<sup>rd</sup> most popular question on the paper this session.

Most candidates defined murder at the start. The better answers then went to consider and apply the AR and determine this was present.

The majority of this part should have been centered around the MR - intention. Direct/indirect intention should have been applied.

The answer should have concluded mercy killings etc are classed as murder and Gill would be liable as such.

Most candidates did a good job, however some said that it wasn't murder but UDAM and some considered partial defences to murder may be applicable to Gill. There was no evidence that this was the case so that was N/A.

### **3(b)**

Most candidates correctly identified that Nadiya could be liable for murder of Xen and Ollie as AR and MR were present. They then went on to discuss that the crux in relation to both is causation and whether there were any intervening acts.

Overall, most candidates applied the steps of causation correctly and came to the correct conclusion.

### **Question 4**

This was the 2<sup>nd</sup> most popular problem question and 2<sup>nd</sup> most popular question this session.

The first offence was conspiracy. This was signposted by the fact that Kyle and Mandy 'agreed' to burgle the pub. Only the better candidates identified this, and most didn't.

Some then identified criminal damage to the security alarm and/or the door. This was pure speculation as there was no evidence of this in the scenario.

The next offence was burglary (incorporating theft). This part was well answered but some candidates went too far with their descriptors of burglary.

Most candidates identified that the assault on Tom was a battery and correctly applied the law. Some went on to discuss defences and others didn't bother.

Those who did discuss defences correctly identified that there would be no obvious defences available to Kyle or Mandy.

**SUGGESTED POINTS FOR RESPONSE**

**LEVEL 6 - UNIT 3 – CRIMINAL LAW**

Question Number	Suggested Points for Responses	Marks (Max)
<b>1</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Problems with law as it stands</li> <li>• OAPA consolidated offences that were already in existence as opposed to creating new offences</li> <li>• No clear hierarchy of offences</li> <li>• Offences spread over two acts, illogical sequence</li> <li>• No logical distinction between the maximum sentences</li> <li>• Language – old fashioned, complicated and inconsistent</li> <li>• Proposals for reform</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Additional case law to support the points discussed</li> <li>• Precise and well-structured answers which explore the question in greater depth</li> </ul>	<b>25</b>
<b>Question 1 Total: 25 marks</b>		
<b>2(a)</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Recklessness should be defined with reference to subjective and objective recklessness using examples: <u>Cunningham</u> (1957), <u>Caldwell</u> (1982), <u>G and Another</u> (2003).</li> <li>• Discussion of the problems caused by having two tests for recklessness and the confusion this caused.</li> <li>• Reform in this area: the case of <u>G and Another</u> (2003) which established that all recklessness would be subjective thus removing the objective test and clearly defining the concept of recklessness.</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Additional relevant case law illustrating principles outlined above</li> </ul>	<b>10</b>

<p><b>2(b)</b></p>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Explain the principle of coincidence</li> <li>• The meaning of AR and MR elements of criminal liability.</li> <li>• The general rule in respect of coincidence of these elements.</li> <li>• Explanation of the situations where the court has avoided the principle</li> <li>• Define the ‘continuing act’ theory – <u>Fagan v Metropolitan Police Commissioner</u> (1969), <u>Kaitamaki</u> (1985).</li> <li>• Define the ‘duty’ principle – <u>Miller</u> (1983), <u>DPP v Santana-Bermudez</u> (2003).</li> <li>• Define the ‘single transaction’ principle – <u>Thabo Meli v R</u> (1954), <u>Church</u> (1965), <u>LeBrun</u> (1991), <u>Attorney General’s Reference (No 4 of 1980)</u> (1981).</li> <li>• Define the doctrine of transferred malice – <u>Latimer</u> (1886).</li> <li>• Discussion of all of the above situations and how the courts have managed to avoid the principle in each of them.</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Additional case law to support the points discussed</li> <li>• Exhibit comprehensive knowledge and understanding of a difficult area</li> </ul>	<p><b>15</b></p>
<p><b>Question 2 Total: 25 marks</b></p>		
<p><b>3</b></p>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Identification that the Theft Act 1968 (TA 1968), the Theft Act 1978 (TA 1978) and the Fraud Act 2006 (FA) are all relevant to this statement.</li> <li>• Attempts made to clarify the law in relation to fraud and deception offences.</li> <li>• Background – fraud and deception offences covered by Theft Acts 1968 and 1978. Candidates will not lose marks if they fail to refer specifically to particular sections of these Acts, as long as they refer to the issues that arose out of these Acts.</li> <li>• Problems with offences being too complicated and unclear.</li> <li>• Law was over-particularised leading to incorrect charging or over charging.</li> <li>• FA introduced in January 2007.</li> <li>• Four offences created by FA.</li> <li>• Concentration on proof of conduct as opposed to proving elements of AR.</li> <li>• Comparison of old law and new law relating to deception.</li> </ul>	<p><b>25</b></p>

	<p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Additional relevant case law illustrating principles outlined above</li> <li>• A detailed academic critique of drafting of the FA</li> </ul>	
<b>Question 3 Total: 25 marks</b>		
<b>4</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• The test – look forward to determine whether D’s act went beyond more than merely preparatory acts in relation to the substantive offence.</li> <li>• Prior to CAA common law tests which looked backwards from the substantive offence.</li> <li>• The Proximity Test – <i>Eagleton (1855)</i>, <i>Robinson (1915)</i>.</li> <li>• The Rubicon Test – <i>Stonehouse (1978)</i>, <i>Widdowson (1986)</i>.</li> <li>• The Series of Acts Test – <i>Hope v Brown (1954)</i>, <i>Davey v Lee (1968)</i>, <i>Boyle and Boyle (1987)</i>.</li> <li>• Combination of common law tests – <i>Gullefer (1990)</i>, <i>Jones (1990)</i>.</li> <li>• Most recent test – <i>Geddes (1996)</i>, <i>Tosti and White (1997)</i>, <i>Nash (1998)</i>.</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Additional case law to support the points discussed</li> <li>• Discussion of attempts to reform this area of law</li> </ul>	<b>25</b>
<b>Question 4 Total: 25 marks</b>		

## SECTION B

Question Number	Suggested Points for Responses	Marks (Max)
<b>1</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Discussion and definition of simple criminal damage – s1(1) Criminal Damage Act 1971 – damage to Johannes’s car</li> <li>• Discussion of s20 Offences Against the Person Act 1861 (OAPA). Mention and discard s18 OAPA - stabbing of Johannes by Curtis.</li> <li>• Discussion of involuntary manslaughter UDAM, to include a discussion about causation. Base act for involuntary manslaughter is s20 GBH. - Death of Johannes</li> <li>• Discussion of self -defence/mistake as a potential defence – re all assaults carried out by Curtis.</li> <li>• Application of above areas to the facts</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Additional relevant case law illustrating principles outlined above</li> </ul>	<b>25</b>
<b>Question 1 Total:25 marks</b>		





<p><b>2</b></p>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Discussion and definition of s2 of the Fraud Act 2006 - Representations made to the bank manager</li> <li>• Discussion and definition of Assault occasioning actual bodily harm s47 Offences Against the Person Act 1861 (OAPA) and Grievous bodily harm s20 OAPA (this offence should then be discarded) - assault on Aaron</li> <li>• Discussion and definition of simple criminal damage and arson, s1(1) and s1(3) Criminal Damage Act 1971 – damage to the bank</li> <li>• Discussion of intoxication as a potential defence – re all offences carried out by Rufus</li> <li>• Application of above areas to the facts</li> <li>• A considered response which clearly addresses the purpose of the question</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Additional relevant case law illustrating principles outlined above</li> </ul>	<p><b>25</b></p>
<p><b>Question 2 Total:25 marks</b></p>		
<p><b>3(a)</b></p>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Definition of murder to cover both parts of the Q</li> <li>• Identify that the scenario relates to the MR and the intention to cause death.</li> <li>• Intention should be defined with reference to direct and indirect/oblique intention. This should be supported with relevant case law.</li> <li>• Causation – factual and Legal – can it be established</li> <li>• Direct intention/ indirect intention – can it be established</li> <li>• No defence would be available as there is no special defence for people who commit mercy killings</li> <li>• Application of above areas to the facts</li> <li>• A considered response which clearly addresses the purpose of the question</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Identify which parts of the definition are being tested by the scenario</li> <li>• Additional relevant case law illustrating principles outlined above</li> </ul>	<p><b>10</b></p>

<b>3(b)</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Definition of murder to cover both parts of the question</li> <li>• Identify that the scenario relates to the AR, in particular causation</li> <li>• When reviewing the facts consideration must be given to causation (both in fact and in law), and whether there was a break in the chain of causation (<i>novus actus interveniens</i>)</li> <li>• Xena’s death factual and legal causation can be found. Even though Xena attempted to escape, this would not have been a <i>novus actus interveniens</i> as it might have been reasonably foreseeable that she may try to escape in the circumstances. MR is proven by either direct or indirect intent</li> <li>• Application of the above areas to the facts</li> <li>• In relation to Ollie’s death factual and legal causation can be found.</li> <li>• The chain of causation is unlikely to be broken. The MR is also present</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• If voluntary manslaughter is considered, loss of control would be the only possible consideration. This should then also be discarded based on the facts.</li> <li>• Identify which parts of the definition are being tested by the scenario</li> <li>• Clearly address the purpose of the question and provide a considered and structured response.</li> </ul>	<b>15</b>
<b>Question 3 Total: 25 marks</b>		
<b>4</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Discussion of statutory conspiracy – s1(1) Criminal Law Act 1977</li> <li>• Discussion and definition of S1 Theft Act 1968</li> <li>• Discussion and definition of s9(1)(a) and 9(1)(b) Theft Act 1968</li> <li>• Discussion and definition of s39 Criminal Justice Act 1988</li> <li>• Application of above areas to the facts</li> <li>• A considered response which clearly addresses the purpose of the question</li> </ul> <p>Responses could include:</p> <p>Additional relevant case law illustrating principles outlined above</p>	<b>25</b>
<b>Question 4 Total: 25 marks</b>		