



CHIEF EXAMINER REPORT

JANUARY 2024

LEVEL 6 UNIT 3 – CRIMINAL LAW

The purpose of the suggested points for responses is to provide candidates and Training Providers with guidance as to the key points candidates should have included in their answers to the January 2024 examinations.

The suggested points for responses sets out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed in the suggested points for responses or alternative valid responses.

Chief Examiner Overview

This was a relatively small cohort.

Overall this paper was completed to a good standard by most candidates, which is great to see. Section B in particular was popular and in general candidates performed better in this section, in particular the questions that addressed the offences of Murder, Voluntary Manslaughter and Involuntary Manslaughter, and the Offences Against the Person. It is clear candidates know how to apply the law to a scenario in these specific areas and also how to critically analyse/assess/evaluate for their Section A responses. Discussion of reform in the areas above is of a good standard.

In terms of areas of improvement, the key issue throughout is the lack of structure in problem questions; candidates should be utilising the IRAC/IDEA method in order to properly approach each element of the problem question. The application to the scenario is of utmost importance in problem questions and adequate time should be allocated to this. Good candidates were able to apply the law well but other candidates merely stated the law with a short application.

Another improvement would be to revise all areas of the specification, as many candidates missed out on fraud, conspiracy and aiding and abetting, losing those candidates marks. My advice would be to explore all possible outcomes in your answer, discounting them if you feel it is not relevant. With this, it is important to keep in mind relevant, updated case law as some of the questions asked needed a reflection on this (for example the case of *R v BM*) in Section A question 4(a). These cases provide crucial discussion needed for a good answer.

Finally, Section A answers in general need improvement, specifically around structure and content. Section A questions require candidates to write a formal essay with an introduction, body and conclusion, with key points of discussion and examples/case law/reference to academic literature throughout. Candidates should be engaging in wider reading to support the manual.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking the Level 6 exams limits the scope for constructive feedback to be given and for firm conclusions to be reached. Therefore, feedback on candidate performance is limited.

Section A

Question 1	25 marks
<p>This was a popular question among candidates and was generally done well. Candidates clearly understood the issues with insanity and its overlap with the new partial defence of diminished responsibility. It would have been better if candidates were able to state the applicable law and the applicable case law for insanity, as this was done better with the discussion of diminished responsibility.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none">● Description and explanation of the law on the defence of insanity, including the M’Naghten rules and relevant case law● Discussion of the advantages and disadvantages of the defence of insanity.● Possible answers could include:<ul style="list-style-type: none">○ the outdated rules established in from M’Naghten○ the wide scope of ‘disease of the mind’ and the rise in awareness of mental health conditions○ the overlap with the defence of diminished responsibility in cases of murder○ the reluctance of defendants to plead insanity due to the stigma attached to it○ the issue with epilepsy and diabetes● An explanation of possible reforms:<ul style="list-style-type: none">○ The Butler Committee report○ any other academic/Law Commission reform proposals	

Question 2	25 marks
<p>This was another popular question with candidates and was generally done to a good standard. It is clear candidates understand the partial defence of loss of control, the key elements and related case law. There were some excellent answers regarding the reform in 2009 and why it was implemented, however the 'critical' assessment needs work, for example a discussion of the impact on women and girls, domestic abuse/violence victims and the problem with having a defence based on anger.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> ● Description and explanation of the law on the defence of loss of control, including the test used (loss of control, qualifying trigger and objective test) and relevant case law ● Discussion of the advantages and disadvantages of the defence of loss of control. ● Possible answers could include: <ul style="list-style-type: none"> ○ the loss of self - control requirement - change from the old law of provocation (sudden and temporary loss of self - control) ○ the advancement in the law on Battered Person's Syndrome and the 'slow burn' argument ○ the qualifying triggers and the sexual infidelity argument ○ whether or not is in an improvement on the old law of provocation ○ problems with the objective test ● An explanation of possible reforms: <ul style="list-style-type: none"> ○ The Law Commission, Partial Defences to Murder 2003, and Murder, Manslaughter and Infanticide 2006 ● any other academic/Law Commission reform proposals 	

Question 3	25 marks
<p>Overall, candidate understanding was good, however further case law was needed to develop the arguments throughout the answers.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> ● Description and explanation of the law on attempts, including the test and relevant case law ● Discussion of the advantages and disadvantages of the law on attempts. ● Possible answers could include: <ul style="list-style-type: none"> ○ whether the test (beyond more than merely preparatory) is satisfactory ○ an explanation of the fact that prior to the CAA, common law tests were used which looked backwards from the substantive offence ○ a discussion on the Proximity Test using case law to illustrate the point - Eagleton (1855), Robinson (1915) ○ a discussion on the Rubicon Test using case law to illustrate the point - Stonehouse (1978), Widdowson (1986) ○ a discussion on the Series of Acts Test ○ a discussion on the combination of common law tests ○ a critical discussion of Geddes (1996) and other case law including Tosti and White (1997) and Nash (1998) ● An explanation of possible reforms: <ul style="list-style-type: none"> ○ any academic/Law Commission reform proposals 	

Question 4a	15 marks
Candidates understood the general law on consent and the number of exceptions and issues that arise, along with a good understanding and evaluation of case law. However, I would have liked to have seen further discussion of the recent case of <i>R v BM (2018)</i> and a critique of the judicial commentary throughout this case.	
Suggested Points for Response:	
<ul style="list-style-type: none"> ● Description and explanation of the law on the defence of consent, including the test and relevant case law ● Discussion of the advantages and disadvantages of the law on the defence of consent ● Possible answers could include: <ul style="list-style-type: none"> ○ public policy considerations ○ public interest considerations ○ the rules on sporting activities ○ the rules on body modification ○ implied and explicit consent ● explanation of possible reforms: <ul style="list-style-type: none"> ○ any academic/Law Commission reform proposals 	

Question 4b	10 marks
This is always a popular area that shows good understanding throughout. Case law is used to show candidates knowledge, however case analysis would enhance these answers, for example being able to differentiate the law in the area in certain cases (<i>Roberts and Williams</i> are a good example of this)	
Suggested Points for Response:	
<ul style="list-style-type: none"> ● Description and explanation of the law on legal causation, including the rules on intervening acts and a description of relevant case law ● Discussion of the advantages and disadvantages of the law on intervening acts ● Possible answers could include: <ul style="list-style-type: none"> ○ a discussion around the 'operating and substantial cause of death' in <i>Smith (1959)</i> ○ an explanation of the three categories of intervening acts - acts of V, acts of third parties and medical negligence ○ the issue with foreseeability of intervening acts ○ the criticisms of medical intervention intervening acts ○ explanation of possible reforms: ○ any academic/Law Commission reform proposals 	

Section B

Question 1	25 marks
<p>A high number of candidates picked up on the possibility of Paula being convicted of Gross Negligence Manslaughter, however, many candidates did not pick up on the possibility of Seb being convicted of Unlawful Act Manslaughter. Self defence was addressed to a good standard and the best candidates provided a good discussion and application of factual and legal causation.</p>	
<p>Suggested Points for Response:</p>	
<p><u>Seb</u></p> <ul style="list-style-type: none">● Identification and discussion of involuntary manslaughter.● Discussion of unlawful act manslaughter with regards to Seb and application of the test: the unlawful act (punch), dangerousness (discussion of Church necessary) and causation.● Causation should be the key focus, with both factual and legal causation being discussed in detail.● Regarding legal causation, candidates should provide a detailed discussion of intervening acts and 'substantial' cause of death, Application to the scenario - likely to satisfy elements of UAM.● Discussion of possible defence of self-defence (of another) with regards to Seb defending Cassie from Bob.● Conclusion that self - defence is a possible defence due to defending another and the imminence of the threat.	
<p><u>Paula</u></p> <ul style="list-style-type: none">● Discussion of gross negligence manslaughter with regards to Paula● Duty of care towards Bob(doctor - patient), the possible breach of this duty with regards to the incorrect medication and a discussion of causation. This should be discounted on the basis of the final part of the test regarding causation and Paula not satisfying either test for factual causation or the test for legal causation.	

Question 2

25 marks

Similar to previous exams, murder was discussed in great detail and to a good standard. s39 assault was identified by some candidates and was done to a very good standard, however, there were few candidates who correctly discussed conspiracy and aiding, abetting, counselling and procuring. This is an area that needs more attention by candidates in the future.

Suggested Points for Response:**Annie**

- Identification and discussion of murder
- Explanation of the actus reus and mens rea of murder - a key discussion of intention is needed here.
- Application of scenario - actus reus is satisfied - candidates may discuss self defence with regards to the 'unlawful' element, but this should be discounted - mens rea is satisfied - Annie brought a knife and stabbed without being provoked.
- Identification and discussion of section 39 CJA 1988 assault with a key discussion of immediacy and relevant case law (Constanza, Ireland)
- Application to scenario - Annie would be likely found guilty of section 39 assault.
- Identification and discussion of conspiracy
- Application to scenario – unlikely to be found guilty of conspiracy

Karina

- Identification and discussion of section 8 Accessories and Abettors Act 1861
- Explanation of the actus reus and mens rea requirements of aiding, abetting, counselling and procuring
- Application to scenario - Karina may be an accessory, she was present at the time and encouraged the offence. Discussion of foresight of consequences.
- Applicable case law - Stringer (2011), Coney (1881), Jogee (2016)
- Identification and discussion of section 39 CJA 1988 assault with a key discussion of immediacy and relevant case law (Constanza, Ireland)
- Application to scenario – Karina would be likely found guilty of section 39 assault.
- Identification and discussion of conspiracy
- Application to scenario – unlikely to be found guilty of conspiracy

Question 3

25 marks

Candidates who chose this question address theft to a very good standard, however, the standard fell when it came to burglary and the difference between s9(1)(a) and (b). Some candidates did not discuss burglary at all. Again, discussion of conspiracy was also missing throughout the answers, but the defence of duress was done to a good standard.

Suggested Points for Response:**Lewis and Olivier**

- Identification and discussion of burglary under section 9 Theft Act 1968
- Explanation of the elements of burglary - entry, building, trespasser, intention element and difference between s9(1)(a) and s9(1)(b)
- Application to scenario - discussion of s9(1)(a) due to the intent being formed before the entry, entry ('enter the building'), building ('factory'), trespasser (factory was closed) - also a discussion of section 9(1)(b)
- Identification and discussion of conspiracy
- Explanation and application – an agreement has been made between Lewis and Olivier, the agreement is to commit a criminal offence and there was intention from both parties to commit the criminal offence.
- No defences available for Lewis and Olivier

Wakas

- Identification and discussion of burglary under section 9 Theft Act 1968
- Explanation of the elements of burglary - entry, building, trespasser, intention element and difference between s9(1)(a) and s9(1)(b)
- Application to scenario - discussion of s9(1)(a) due to the intent being formed before the entry, entry ('enter the building'), building ('factory'), trespasser (factory was closed) - also a discussion of section 9(1)(b)
- Defence of duress by threats is available to Wakas - discussion of the subjective and objective element of the Graham test - reasonable belief of death or serious injury (satisfied - 'they will hurt him the next time they see him') and objective reasonable person test (likely to be satisfied due to the fact there are two people threatening and they see each other often due to working together)

Question 4a	10 marks
<p>Another question that required a discussion of theft that was done to a very good standard by most candidates, although further case law was needed throughout. However, most candidates did not identify and apply s4 Fraud which is a shame, as this limited their answer overall.</p>	
<p>Suggested Points for Response:</p>	
<p>Marie</p> <ul style="list-style-type: none"> ● identification and discussion of theft under the Theft Act 1986 ● Explanation of section 2 - 6 with relevant case law - appropriation, property, belonging to another, dishonesty and intention to permanently deprive. ● Application to scenario - Marie has appropriated ('decides to take'), property (tangible - £60), belonging to another (the firm), dishonesty (knew that lunch normally does not cost £75, discussion of Ivey), intention to permanently deprive (she did not intend to give it back), failure to restore the property given under an obligation. ● Discussion of any defences - Marie could argue that she thought she had permission to take the money as Edward has said she can 'get herself a coffee and lunch' but on an objective test, a reasonable person would not take £75 for lunch. ● Identification and discussion of fraud under the Fraud Act 2006 ● Explanation of section 4 with relevant case law – fraud by abuse of position ● Application to scenario – likely to be found guilty of s4 as Marie was trusted with the money as part of her job role. 	

Question 4b	15 marks
<p>For this question, murder and the partial defence of loss of control were both done to a very good standard, with the application being a highlight, however, the majority of candidates did not discuss the partial defence of diminished responsibility, which should have been discussed but then discounted due to lack of medical evidence.</p>	
<p>Suggested Points for Response:</p>	
<p>Nick</p> <ul style="list-style-type: none"> ● Identification and discussion of murder ● Explanation of the actus reus and mens rea of murder ● Application of scenario - actus reus and mens rea satisfied, but a partial defence is available ● Identification and discussion of loss of control ● Explanation of the test - loss of control, qualifying trigger and objective test ● Application to scenario - test for loss of control is satisfied based on the qualifying trigger of laughing/taunting (things said or done) and the objective test - a discussion of Camplin (1978) is relevant here ● Identification and discussion of diminished responsibility ● Explanation of the test - abnormality of mental functioning, recognised medical condition, substantial impairment and provides an excuse for the conduct. ● Application to scenario - likely to fail as a defence due to the recognised medical condition - Nick has not been to see a doctor and therefore does not have evidence. LOC is a better defence to use. 	