



CHIEF EXAMINER REPORT

January 2025

LEVEL 6 UNIT 18 – CRIMINAL LITIGATION

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 2025 examinations.

The 'suggested points for responses' sections set 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

On the very limited evidence available due to the small cohort size, there is nothing to suggest any concern.

Only ten candidates sat the exam.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking this examination limits the scope for constructive and valid feedback to be given and for firm conclusions to be reached and embraced for positive use by candidates.

Therefore, no feedback on candidate performance has been included.

Question 1a	5 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none">• At present you only have third-party instructions.• These do not justify you acting on behalf of Carlo Mendoza.• It will be necessary to make contact with Carlo Mendoza to confirm that he wishes you to act for him.• It will be necessary to route a request for authorisation to act as own solicitor at the police station.• You can then advise him in the usual way and that advice is free of charge.	

Question 1b	7 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none">• It appears likely that Carlo Mendoza will deny involvement in the offence.• There are witnesses who claim to be able to identify those involved and Carlo Mendoza is an available suspect.• The police should undertake an identification procedure.• The preferred procedure is a VIPER/PROMAT virtual video identification parade. This is considered to be the fairest procedure, producing the fewest false positive identifications.• Standardised video images of Carlo Mendoza performing a range of movements together with images of eight comparators performing the same movements will be shown to the witnesses separately.• The arrangements for the procedure will be the responsibility of an identification officer who is otherwise independent of the investigation.• The defence representative is entitled to see the initial descriptions given by the witnesses, and to check the intended comparator videos to ensure that they are similar to Carlo Mendoza.• In the event that Carlo Mendoza has any particular distinguishing feature this should be electronically disguised, or replicated on the comparator images.• Carlo Mendoza is not obliged to consent to the procedure, but if he does not do so, this can be given in evidence.• Additionally the police can adopt other methods which do not require consent such as covert video, group identification in a public place or even confrontation. These are more likely to produce a false positive.	

Question 1c	5 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Para 6.2 of the SRA Code 2023 provides that you may not act for more than one client where there is a conflict of interest between them or a significant risk of one. • Here we know that Carlo Mendoza denies all involvement, but, assuming what his sister has told you is accurate, know that Santiago Palma was involved. • We do not know what Santiago Palma will say, whether as to his own involvement or that of Carlo Mendoza. • There is however a very significant risk of conflict either at the outset or subsequently. • The exceptions allowing acting with the informed consent of both clients do not apply as they do not have a substantially common interest and are not competing for the same objective. • It is safest to decline the request, as if you commence acting for Santiago Palma and a conflict arises this could compromise your ability to continue to represent Carlo Mendoza. 	

Question 1d	8 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Given that there has been a full admission in interview, this case is likely to be listed as an Anticipated Guilty Plea (GAP) at the Magistrates' Court within 14 days of charge. • The prosecution will serve Initial Details of the Prosecution Case in advance of the hearing. • Possession of a controlled drug of Class B is an either way offence. • The hearing will commence as a Plea before Venue. The charge will be put to Carlo Mendoza and he will be asked how he would plead. • If, as is likely here, he indicates a plea of guilty, that will be taken as a guilty plea and the court will proceed to consider whether it has sufficient powers of sentencing. • The sentencing guidelines (SG) indicate a starting point of a Band B fine and a sentencing range of a discharge up to 26 weeks custody (although the Magistrates' Court can only impose 12 weeks custody). • The court is therefore highly likely to sentence, with a fine being the most likely outcome. • The previous conviction for possession of drugs is a statutory aggravating factor, and other factors which will influence the penalty will be the amount of the drug and the discount for a guilty plea at the first opportunity following admissions in interview. 	

Question 2a	5 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Application is made electronically to the Legal Aid Agency. • Glenn Boston will need to satisfy a means test and, unless the case is allocated to the Crown Court, a merits test. • Glenn Boston is not in receipt of a passporting benefit. • Adjusted income is below the limit of £12,475, so Glenn Boston qualifies for legal aid funding in the Magistrates' Court and in the Crown Court with a nil contribution from income. • There is no question of any contribution from capital. • If the merits test is relevant, there is a clear risk of loss of reputation, and also potential loss of liberty as these offences would potentially carry a custodial sentence. 	

Question 2b	10 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Following an indicated not guilty plea at Plea before Venue, the court will proceed to consider mode of trial/allocation. • The two counts of burglary are triable either way. The maximum sentence which the Magistrates' Court can impose is therefore 12 months. • When considering allocation the court must take into account the statutory factors under s 19 Magistrates' Court Act 1980. • When considering representations from the parties the court must treat the case as being at least as serious as represented by the prosecution. • The crucial factor will be whether the court has sufficient powers of sentence to allow the presumption of summary trial to prevail. • Here the two counts of burglary appear to fall within category B1 as there is a degree of planning and substantial loss, but none of the other factors are relevant. • The starting point is 12 months custody so it is quite finely balanced whether the Magistrates' Court would consider it had jurisdiction. • If the Magistrates' Court accepts jurisdiction, Glenn Boston can elect trial on indictment. • The case does not appear to be one involving legal complexities better suited for trial on indictment, the sentencing powers of the Crown Court are considerably greater, the possibility of acquittal possibly greater at Crown Court. Crown Court potentially attracts greater publicity and is a more formal process. Potentially higher adverse costs order in Crown Court. (Max 2 for election tactical considerations.) • The court will also consider bail and reporting restrictions, and will adjourn for a pre-trial review in the Magistrates' Court or for a Plea and Trial Preparation Hearing in the Crown Court as appropriate. • The counts of taking without consent and no insurance can also be sent to the Crown Court if the burglary counts are sent as they are linked and imprisonable and/or carry disqualification pursuant to s 51 Crime and Disorder Act 1998. 	

Question 2c	7 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Failure to surrender to custody without reasonable excuse is a criminal offence: s 6 Bail Act 1976. • Making a mistake as to the date is not a reasonable excuse. • Glenn Boston should surrender to custody at the earliest opportunity to mitigate the offence. • As the failure does not appear to be deliberate, and has not seriously inconvenienced the progress of the case it would appear to be a category B3 offence for sentencing purposes, not attracting a custodial sentence. • The court on the next appearance will reconsider whether to re-bail Glenn Boston or remand him in custody. • Kempstons can make representations in favour of re-bailing, offering or agreeing to (subject to instructions) appropriate conditions such as regular reporting. 	

Question 3a	7 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<p>Part 1: Plea</p> <p>I confirm that I intend to plead not guilty to all the charges against me.</p> <p>Part 2: Nature of the defence</p> <ul style="list-style-type: none"> • (a) I deny all involvement in the two alleged burglaries. I had the consent of the owner of the vehicle to permit its use by a third-party. I did not use the vehicle myself. I have an alibi in relation to the alleged burglary on the 14/15 October 2024. • (b) I take issue with the prosecutor as to the fact that I had any involvement in the burglaries. There is no sufficient evidence of such involvement. • (c) I take issue with the prosecutor on the question of whether I had authority to use or permit the use of the vehicle in question. My case is that my brother, the owner of the vehicle, had given me the necessary authority. • (d) I do not intend to rely on any other matters of fact. • (e) I do not intend to rely on any point of law. • (f) During the period from 8.00 pm on 14 October 2024 until 2.00 am on 15 October 2024, I was at 27C Highbury Road Cardington in the company of Nadine Phillips, and could not therefore have participated in a burglary at Marston at 1.00 am or have been driving or present in a vehicle on the road from Bedford to Marston at either 12.45 am or 1.20 am. • The witness in support of this alibi is Nadine Phillips, date of birth 12 May 2000 and whose address is 27C Highbury Road Cardington. 	

Question 3b	8 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • A witness cannot be compelled to attend if outside the jurisdiction. • Evidence could be given by video link if the witness is prepared to cooperate and if the necessary facilities are available in Dubai. This testimony would be subject to cross-examination in the usual way. • The prosecution can apply to have the evidence admitted as hearsay. • S116 Criminal Justice Act 2003 makes a hearsay statement admissible if live evidence from the witness would have been admissible, and the witness is satisfactorily identified (which is the case here). • It applies if the witness is outside the United Kingdom and it is not reasonably practicable to secure his attendance, which appears to be the case. • The defence can challenge the admissibility of the evidence on grounds that it would be unfair to admit it: s 78 PACE. • Evidence can be led to undermine the hearsay evidence. • If such evidence is led, the judge should direct the jury to consider the weight to be given to the hearsay evidence as it has not been subjected to testing and cross-examination. 	

Question 3c	14 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • As usual the burden of proof is on the prosecution to the criminal standard. • There appears to be sufficient evidence that the burglaries in question have occurred, so the principal issue is whether the prosecution can establish to the criminal standard that Glenn Boston was a party to them, and was using his brother's Land Rover without consent or insurance. • The ANPR camera evidence clearly places the Land Rover in the vicinity of the first offence, and the totality of the evidence would seem to establish clearly that the vehicle was involved in this offence. • The DNA evidence implicates Glenn Boston, but is not conclusive, as it could have been deposited on the occasions when he was using the Land Rover with consent. • The evidence against Richard Johnson is stronger, but is evidence only against him. • The fact that the three accused all worked together is circumstantial, but does to some extent establish that they were working together in relation to these offences. • If accepted as true by the jury the alibi evidence precludes the direct involvement of Glenn Boston in the first burglary, but not the second. • Glenn Boston did not mention the alibi in interview. The prosecution may seek to draw adverse inferences from this. • The same will apply to the failure to give an account of the arrangements with Carl Boston in relation to the Land Rover. • Glenn Boston is of previous good character. He is therefore entitled to a full Vye direction as to both propensity and credit. • As a former co-accused who has now pleaded guilty and been sentenced, James Atkinson is a competent and compellable witness for the prosecution. • His evidence is highly damaging. • Given his previous convictions, he is of bad character. • Alleging that he is implicating Glenn Boston to protect another offender clearly attacks his character. • As Glenn Boston is of good character there are no disadvantages to applying to put the character of James Atkinson in evidence pursuant to s 100 Criminal Justice Act 2003. His credibility is an issue between the parties. 	

Question 4a	12 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • The evidence of the two children is prima facie admissible, although they will give unsworn evidence. • Special measures will be taken pursuant to the Youth Justice and Criminal Evidence Act 1999. • Likely to involve a video recorded ABE interview, video cross examination. • Must be capable of giving coherent evidence and understanding the importance of telling the truth. • The eyewitness evidence is admissible, but if it is disputed, the Turnbull guidelines will apply. • The trier of fact must be directed that recognition and identification of other humans is problematic. • The relevant factors are likely to be age and eyesight of the witness, the duration of the observation, and any other factors. • If considered to be strong the evidence can be relied on, but otherwise the trier of fact should look for independent confirmation. 	

- S 1 PACE does authorise a stop and search if the officer has reasonable grounds to suspect that the person being stopped is in possession of, inter alia, an article intended for use in relation to an offence of criminal damage.
- The officer has received intelligence relating to a specific offence and offender which would appear to give reasonable grounds for stopping and searching Sandra Smith.
- S 2 PACE requires the officer to bring to the attention of the person concerned before undertaking a search the officer's name and station, the object of the search and the grounds for the search.
- Failure to comply renders the stop and search unlawful.
- It may also result in the exclusion of any evidence obtained.

Question 4b	7 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Sandra Smith is entitled to a full discount for an early guilty plea. • The court should have regard to the potential impact on her father pursuant to Art 8 ECHR. • The personality disorder may be a mitigating factor reducing her culpability. • Her previous good character is also a mitigating factor. • The sentencing guidelines for criminal damage charged as arson suggest that this is in Category C2, as culpability is reduced by the personality disorder and this appears to be recklessness as to property damage. The value of the damage is significant. • The starting point is a high level community order and the sentencing range from a mid-level community order to 9 months custody. • The focus of the mitigation should be on persuading the court that the custody threshold has not been crossed and that a community order is appropriate. • If a custodial sentence is appropriate, the mitigation should seek to persuade the court that this should be suspended. 	

Question 4c	5 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • There is nothing to suggest an error of law which would justify an appeal by way of case stated to the High Court pursuant to s 111 Magistrates' Courts Act 1980. • Sandra Smith can appeal against sentence to the Crown Court pursuant to s 108 Magistrates' Courts Act 1980. • Notice of appeal should be given within 21 days. • Grounds of appeal do not need to be stated. • The Crown Court will review the evidence and submissions and reach its own determination. • It may impose any sentence which the Magistrates' Court could have imposed, so there is a potential risk of a higher sentence. 	