



## **CHIEF EXAMINER REPORT**

**JANUARY 2026**

**LEVEL 6 UNIT 3– CRIMINAL LAW**

The purpose of the report is to provide candidates and training providers with guidance as to the key points candidates should have included in their answers to the January 2026 examinations.

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

Candidates will have received credit, where applicable, for other points not addressed.

### Chief Examiner Overview

There were some strong answers to individual questions. The structure of Section A answers was consistent and applied throughout most answers, with an introduction, description and explanation of the applicable law, and then arguments/reform with a conclusion. One key area of strength with Section B questions was the structure of answers and use of case law.

Section A questions will always require a level of analysis of different topics; the best answers to these questions provide a description and explanation of the applicable law/case law, and then advantages/disadvantages/reasons for/reasons against the topic being discussed, along with any areas of reform.

Candidates should be aware that the approach to sub-questions (ie, a and b) should be the same as the full questions in terms of structure, depth, analysis, however there are less discussion points in these questions.

If a candidate believes there may be more than one answer to be discussed (for example s47/s20), then they should do so and then come to a reasoned conclusion.

## 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 may be limited.

### Section A

| Question 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 25 marks |
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| <p>This question attempted by less than half of candidates and was answered reasonably well by most, with some very good answers.</p> <p>Most candidates were able to describe and explain recklessness as a type of <i>mens rea</i> and discuss the main part of the question which required a focus on the evolution of recklessness, with a focus on the cases of Cunningham, Nedrick and R v G and R.</p>                                                                                                                                                                                                                                                                                                                                                                                                        |          |
| <b>Suggested Points for Response:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |          |
| <ul style="list-style-type: none"><li>• Description and explanation of the concept of recklessness as a basis for the <i>mens rea</i> of certain crimes, e.g assault, battery, ABH, criminal damage.</li><li>• Discussion of the evolution of the concept of recklessness as the basis for the <i>mens rea</i> of a crime is key – discussion of the key cases of R v Cunningham (1957), R v Caldwell (1982), R v G and R (2003) and R v Brady (2006).</li><li>• Analysis of the approach of the judges in the above cases with specific attention given to subjective recklessness and the argument for objective recklessness.</li><li>• A concluding comment on the evolution of the case law and the relevance of the decided cases.</li><li>• Application of case law correctly to support reasoning.</li></ul> |          |

| Question 2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 25 marks |
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| <p>No candidates answered this question.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |          |
| <b>Suggested Points for Response:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |          |
| <ul style="list-style-type: none"><li>• Description and explanation of the law on joint enterprise, including any relevant legal tests or reasoning.</li><li>• Discussion of the evolution of the law on joint enterprise is key – discussion must relate to the key case of Jogee (2016), along with Chan Wing Siu (1985) as a basis of the pre – Jogee approach, and other cases for the post – Jogee effect, such as Crilly (2018), Taj (2018) and Mitchell (2018).</li><li>• Analysis of the approach of the judges pre and post Jogee in cases relating to joint enterprise.</li><li>• A concluding comment on the evolution of the case law and the relevance of the decided cases.</li><li>• Application of case law correctly to support reasoning.</li></ul> |          |

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| Question 3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 25 marks |
| <p>This question was attempted by almost two thirds of candidates and the performance was mixed.</p> <p>Candidates were able to describe and explain a duty of care in criminal law, with most discussing omissions, negligence and gross negligence manslaughter. Weaker responses picked one of the three areas and did not discuss all applicable duty of care situations.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |          |
| Suggested Points for Response:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |          |
| <ul style="list-style-type: none"> <li>• Description and explanation of areas of criminal law where a duty of care exists, such as omissions and cases related to gross negligence manslaughter.</li> <li>• Discussion of omissions including a definition, the different types (relationship, employment, voluntary duty, a duty brought about by actions) and how these different types relate to a duty of care, along with relevant case law such as Pittwood (1902), Miller (1983), Evans (2009)</li> <li>• Discussion of test for duty of care in gross negligence manslaughter, including the legal test.</li> <li>• Analysis of the law in cases relating to a duty of care and whether or not it is fit for purpose.</li> <li>• A concluding comment on the effectiveness of law and the relevance of the decided cases.</li> <li>• Application of case law correctly to support reasoning.</li> </ul> |          |

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| Question 4a                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 14 Marks |
| <p>This question was attempted by almost two thirds of candidates and the performance was mixed. Some candidates were able to discuss coincidence of <i>actus reus</i> and <i>mens rea</i> at a basic level but should have critically assessed.</p>                                                                                                                                                                                                                                                                                                                                                            |          |
| Suggested Points for Response Question 4a:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |          |
| <ul style="list-style-type: none"> <li>• Description and explanation of the law on coincidence of <i>actus reus</i> and <i>mens rea</i> and the legal rules surrounding this principle.</li> <li>• Discussion of relevant case law including Thabo Meli (1954), Fagan (1969) and reference to a 'continuing act.' Reference to DPP v K (1990) can be discussed with regards to omissions and avoiding the need for the coincidence of AR and MR.</li> <li>• A concluding comment which approaches the statement and the question.</li> <li>• Application of case law correctly to support reasoning.</li> </ul> |          |
| Question 4b                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 11 marks |
| <p>This question was attempted by almost two thirds of candidates and the performance was mixed. Candidates showed sound knowledge and understanding of transferred malice and applicable case law. Some candidates provided basic advantages and disadvantages of this area of law.</p>                                                                                                                                                                                                                                                                                                                        |          |
| Suggested Points for Response Question 4b:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |          |
| <ul style="list-style-type: none"> <li>• Description and explanation of the law on transferred malice and the legal rules surrounding this principle.</li> <li>• Discussion of relevant case law including Latimer (1886), Pembliton (1874), Mitchell (1983), Gnango (2011)</li> <li>• A concluding comment which approaches the statement and the question.</li> <li>• Application of case law correctly to support reasoning.</li> </ul>                                                                                                                                                                      |          |

## Section B

| Question 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 25 marks |
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| <p>This question was attempted by almost two thirds of candidates and was answered reasonably well some very good answers. An area of improvement for the responses to this question is delving deeper into the issue of consent in sporting activity and how this applies in practice.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |          |
| <p>Suggested Points for Response:</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |          |
| <p><b><u>Nina</u></b><br/><b><u>Battery and ABH</u></b></p> <ul style="list-style-type: none"><li>• Identification and discussion of the offence of battery under s39 CJA 1988.</li><li>• Explanation of the <i>actus reus</i> and <i>mens rea</i> of battery - the intentional or reckless (MR) application of unlawful force to another person (AR).</li><li>• Identification of any applicable case law.</li><li>• Application to scenario – Nina has intentionally or recklessly applied unlawful force to Leanne. A discussion of intent is key here and whether it was intentional or reckless. A discussion of ‘unlawful’ is also needed with regards to the defence of consent.</li><li>• Identification and discussion of the offence of ABH under s47 OAPA 1861.</li><li>• Explanation of the <i>actus reus</i> and <i>mens rea</i> of ABH - when a person intentionally or recklessly (MR) assaults another, thereby causing actual bodily harm (ABH) (AR)</li><li>• Discussion of the meaning of ABH – does not need to be permanent but needs to be more than ‘transient and trifling’ as per Donovan.</li><li>• Identification of any applicable case law.</li><li>• Application to scenario – Nina has intentionally or recklessly assaulted Leanne that has led to actual bodily harm (a broken bone is not permanent but more than transient and trifling)</li><li>• Consideration of GBH, both s18 and s20, with regards to the injury and with regards to the intention of Nina.</li></ul> <p><b><u>Defence of Consent</u></b></p> <ul style="list-style-type: none"><li>• Identification and discussion of the defence of consent.</li><li>• Explanation of the defence and identification of any applicable case law – consent to battery in a sporting activity is key here.</li><li>• Application to the scenario – Nina and Leanne are both consenting to the possibility of an injury by being on the pitch in the first place, however students must discuss the difference between consent to an offence of battery and consent to an offence of ABH.</li><li>• A discussion of sporting activity and ‘outside the rules of the game’ is needed (Barnes). Depending on the conclusion of the offence, the application of the defence of consent will be different.</li></ul> <p><b><u>Ian</u></b><br/><b><u>Assault</u></b></p> <ul style="list-style-type: none"><li>• Identification and discussion of the offence of assault under s39 CJA 1988</li><li>• Explanation of the <i>actus reus</i> and <i>mens rea</i> of assault - intentionally or recklessly (MR) causes another to suffer or apprehend immediate unlawful violence (AR)</li><li>• Identification of any applicable case law.</li><li>• Application to the scenario – It is possible that Ian has intentionally or recklessly caused Nina to suffer or apprehend immediate unlawful violence due to him shouting directly at her and doing a throat slitting gesture towards Nina. Discussion of whether this would constitute an assault is needed.</li><li>• Discussion of s47 ABH.</li></ul> |          |

- Discussion of the immediacy of the threat.

## Question 2

25 marks

The number of candidates answering this question was low, therefore data is limited.

### Suggested Points for Response:

#### Annie

##### Criminal Damage

- Identification and discussion of the offence of basic criminal damage under s1 CDA 1971.
- Explanation of the *actus reus* and *mens rea* of the offence – where a person without lawful excuse destroys or damages property belonging to another (AR), intentionally or recklessly (MR).
- Identification of any applicable case law.
- Application to the scenario – Annie has thrown a brick at a window intentionally, satisfying the MR, however no damage has been done. Therefore, the AR is not satisfied as she has not ‘destroyed or damaged’ the property that belonged to another.
- Discussion of attempted criminal damage.

##### Attempts

- Identification and discussion of the offence of attempting to commit a crime under s1 of the Criminal Attempts Act 1981.
- Explanation of the *actus reus* and *mens rea* of an attempt – doing an act that is more than merely preparatory to the commission of the offence (AR), with the intention of committing an offence (MR).
- Identification of any applicable case law.
- Application to the scenario – Annie has committed the act of attempted criminal damage as she has done an act that is ‘more than merely preparatory’ including going to the address with a brick and attempting to throw the brick at the window, despite missing. She has also satisfied the MR as she clearly had the intention to commit the offence of criminal damage.
- Discussion of aggravated criminal damage under s1(2) CDA 1971 as there may have been someone in the kitchen when the brick was thrown.

##### Duress

- Identification and discussion of the defence of duress by threats.
- Explanation of the legal test for the defence – if there is a threat of death or serious harm, who the threat is directed to (themselves or their immediate family), imminency of the threat, availability of avenue of escape and the Graham test. Discussion of the age of Annie and possible reference to the Hasan requirements.
- Identification of any applicable case law.
- Application to the scenario – Annie has been threatened with the death of her brother, albeit by a ‘fake’ gun. Her brother is her immediate family, and they have a close relationship. The threat is imminent due to the use of a ‘fake’ gun, and the Graham test is likely satisfied.
- Discussion of her age and the objective element of the test is needed.
- Discussion of the gun being fake.
- Discussion of whether the threat is imminent and whether there is an avenue of escape for Annie.

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| Question 3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 25 marks |
| <p>This question attempted by less than half of candidates and was answered reasonably well with some very good answers.</p> <p>Candidates performed well when discussing burglary but struggled with the conspiracy and accessory element of the question.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |          |
| Suggested Points for Response:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |          |
| <p><b><u>Rumana</u></b></p> <p><b><u>Burglary</u></b></p> <ul style="list-style-type: none"> <li>• Identification and discussion of the offence of burglary under s9 Theft Act 1968.</li> <li>• Explanation of the <i>actus reus</i> and <i>mens rea</i> of the offence and the difference between s9(1)(a) and s9(1)(b) - when a person enters a building or part of a building as a trespasser (AR) and a discussion of with intent or intent once in the building (MR).</li> <li>• Identification of any applicable case law.</li> <li>• Application to the scenario – Rumana has entered a building (breaks in through the window – premises is a building) as a trespasser (Rumana is no longer an employee and it can therefore be presumed that she did not have permission to be in the premises). Rumana has intent before the trespass and therefore would satisfy s9(1)(a) burglary. S9(1)(b) can also be discussed as, once inside the premises, she stole the equipment.</li> </ul> <p><b><u>Conspiracy</u></b></p> <ul style="list-style-type: none"> <li>• Identification and discussion of the offence of conspiracy under s1 of the Criminal Law Act 1977.</li> <li>• Explanation of the <i>actus reus</i> of conspiracy - an agreement with any other person that a course of conduct will be pursued and will amount to the commission of an offence by one or more parties.</li> <li>• Explanation of the <i>mens rea</i> of conspiracy - intention to play a part in a plan that involves the commission of an offence, intention to play no part in a plan that involves the commission of an offence but did intend that that plan be carried out.</li> <li>• Identification of any applicable case law.</li> <li>• Application to the scenario - both Rumana and Dwayne had an agreement with each other that they would take part in conduct that would lead to the commission of an offence (breaking into the premises). Both Rumana and Dwayne had intention to play a part in a plan that involves the commission of an offence (both went to the premises to make a financial gain for themselves).</li> </ul> <p><b><u>Dwayne</u></b></p> <p><b><u>Burglary - Accessory</u></b></p> <ul style="list-style-type: none"> <li>• Identification and discussion of the offence of aiding and abetting under s8 Accessories and Abettors Act 1861.</li> <li>• Explanation of the <i>actus reus</i> and <i>mens rea</i> of aiding and abetting – D2 must encourage or assist the commission of an offence by D1 (AR) and D2 must intend to encourage or assist the commission of the crime, with knowledge of any existing facts necessary to give D1's conduct/intended conduct its criminal character (MR).</li> <li>• Identification of any applicable case law.</li> <li>• Application to the scenario – Dwayne has assisted the commission of the crime by 'keeping a look out outside' the premises, he has not necessarily encouraged Rumana to do so but has assisted. He also has the intent to assist the commission of the crime of burglary and had knowledge of the criminal offence that Rumana was going to commit.</li> </ul> |          |

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| Question 4a                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 13 Marks |
| <p>This question was attempted by more than two thirds of candidates and was answered reasonably well with some very good answers.</p> <p>Most candidates were able to identify, describe and explain murder and the partial defence of loss of control. The focus of the objective test in loss of control due to Mo being 15 years old was highlighted and discussed well in most responses, however further discussion was needed to add depth to answers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |          |
| Suggested Points for Response Question 4a:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |          |
| <p><b><u>Mo</u></b></p> <p><b><u>Murder</u></b></p> <ul style="list-style-type: none"> <li>• Identification and discussion of the offence of murder under common law.</li> <li>• Explanation of the <i>actus reus</i> and <i>mens rea</i> of murder – the unlawful killing of a human being under the King’s peace with malice aforethought, express or implied.</li> <li>• Identification of any applicable case law.</li> <li>• Application to the scenario – Mo has committed an unlawful killing of a human being, Ethan, under the King’s peace with malice aforethought – Mo intended to push and stab Ethan. Discussion should be focussed on whether Mo satisfies express or implied malice aforethought, with implied (intent to cause GBH) being the probable outcome.</li> </ul> <p><b><u>Loss of Control</u></b></p> <ul style="list-style-type: none"> <li>• Identification and discussion of the partial defence of loss of control under CJA 2009.</li> <li>• Explanation of the legal test for LOC – there must be a LOC, there must be a qualifying trigger, and the objective test must be satisfied.</li> <li>• Identification of any applicable case law.</li> <li>• Application to the scenario – Mo has lost control by reacting to Ethan’s actions, pushing him to the ground and stabbing him. The qualifying trigger is of things said and done, as Ethan has blamed Mo for his own actions which has angered Mo as he did nothing wrong. The key discussion here is of the objective test and whether someone of the same age and sex would have acted in the same way. Mo is a 15-year-old boy and may act in a certain way once provoked.</li> </ul> |          |

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| Question 4b                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 12 marks |
| <p>This question was attempted by more than two thirds of candidates and was answered reasonably well with some very good answers.</p> <p>Some candidates were able to identify, describe and explain the law on ABH and self-defence to a very good standard. Reasonableness and proportionality required more discussion to add depth to the answers given.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |          |
| Suggested Points for Response Question 4b:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |          |
| <p><b><u>Helen</u></b><br/><b><u>ABH</u></b></p> <ul style="list-style-type: none"> <li>• Identification and discussion of the offence of ABH under s47 OAPA 1861.</li> <li>• Explanation of the <i>actus reus</i> and <i>mens rea</i> of ABH - when a person intentionally or recklessly (MR) assaults another, thereby causing actual bodily harm (ABH) (AR).</li> <li>• Discussion of the meaning of ABH – does not need to be permanent but needs to be more than ‘transient and trifling’ as per Donovan.</li> <li>• Identification of any applicable case law.</li> <li>• Application to scenario – Helen has intentionally or recklessly assaulted Jean that has led to actual bodily harm (a bruise is not permanent but more than transient and trifling). Jean is ‘crying’ and ‘scared’ however this is not sufficient for psychiatric harm (Chan Fook).</li> </ul> <p><b><u>Self – defence</u></b></p> <ul style="list-style-type: none"> <li>• Identification and discussion of the defence of self - defence.</li> <li>• Explanation of the legal test for self – defence; was the defence done for the victim or another, was it reasonable and necessary in the circumstances?</li> <li>• Identification of any applicable case law.</li> <li>• Application to scenario – Helen can use the defence of self – defence as she was trying to protect herself from Jean. Subjectively, she feared what Jean might do and it can be argued that she had no other option but to act in case of possible harm. Discuss whether her reaction was reasonable and proportionate in the circumstances.</li> </ul> |          |