



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2023

LEVEL 3 UNIT 11 – CRIMINAL LITIGATION

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 January 2023 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

Candidates managed their time well in the paper, however they should be aware that generally a longer response will be required for questions with more than 6 marks and therefore they should be writing longer answers for these, compared to say questions worth 3 marks.

If a question asks for a right together with a statutory reference, if no statutory reference is given (even if multiple rights are) full marks for the question cannot be obtained and candidates should be advised to answer the question set. Likewise, if a question asks for three rights, there is no need to give an extensive list of multiple rights as this will not gain further marks.

Candidates should take care when citing statutory references that these are given in full.

Candidates struggled with correctly identifying timeframes for submitting appeals.

A number of marks were available for application to the scenario e.g. explaining the contents of a plea in mitigation and this was all material which was freely available in the case study materials so careful attention must be paid to these.



CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a)

Candidates performed well on this question as there were a lot of marks available and only 6 points needed to be included.

1(b)

The majority of candidates did correctly identify 2 rights, however some were able to state the statutory reference for these.

1(c)

Candidates again were able to identify at least some of these. Marks were not awarded for repetition e.g. stating “conducting a risk assessment” and then explaining what this was.

1(d)

Candidates were, in the majority, able to identify the scheme under which free advice was provided by a duty solicitor, however not all correctly identified the act which provided for this.

Question 2(a) (i) and (ii)

As the questions asked for the role of lay magistrates and legal advisers in Magistrates Courts no marks were awarded for explaining what lay meant, how often lay magistrates sat in court or how either of them came to have their positions.

2(b) -This was answered well by almost all candidates.

2(c)

There were a lot of possible answers which would all have gained marks here, however some candidates were referencing sentencing guidelines here when the question was looking at an allocation hearing and therefore allocation guidelines were relevant.

2(d)

Candidates generally performed well however some points were not credited such as lack of publicity in the Magistrates Court being cited as a factor in favour of trial as Magistrates Courts are open to the public and court reporters do attend and report on matters.

2(e)

Most candidates were able to gain at least two marks here but the third for stating where the right to prima facie does not apply was not obtained by many.

2(f)

Whilst most candidates could outline some of the reasons why bail may be refused, for one's own protection was not always mentioned, nor the statutory provision.

2(g) -Candidates struggled to state the correct time limit.

Question 3(a) -This was correctly answered by almost all candidates.

(3b) - Candidates struggled to state the correct statutory provision.

3(c)

There were a lot of marks available here for stating the contents and applying this to the scenario, however some points were missed by candidates, despite them being taken from the case study materials.

3(d)

Credit was given for any reasonable response as to where the offence would fall within the sentencing guidelines as long as this was reasoned. Candidates were able to pick out factors which were relevant to the sentencing guidelines to place the offence within categories.

3(e) - Candidates struggled to state the correct time limit.

SUGGESTED POINTS FOR RESPONSE**JANUARY 2023****LEVEL 3 UNIT 11 – CRIMINAL LITIGATION**

| Question Number | Suggested Points for Responses | Marks (Max) |
|------------------------|---|--------------------|
| 1(a) | <ul style="list-style-type: none">-s.41 PACE 1984 (or s.7 CJA 2003)-initial detention – 24 hours-s.42 PACE 1984-authorisation required for detention of a further 12 hours-authorisation from at least superintendent rank-authorisation from Magistrates Court-for further 36 hours-and then further 24 hours-total 96 hours from arrest to charge/release | 6 |
| 1(b) | <ul style="list-style-type: none">-right to legal advice-s.58 PACE-right to have someone informed of the detention-s.56 PACE-right to rest, food and drink-Code C | 4 |
| 1(c) | <ul style="list-style-type: none">- Oversee detention/interrogation- Keep custody record- Advise suspect of rights- Carry out risk assessment- Order a search if necessary- Deals with detention- Decides on whether or not to charge | 3 |
| 1(d) | <ul style="list-style-type: none">-police station advice and assistance scheme-Legal Aid, Sentencing and Punishment of Offenders Act 2012-free-duty solicitor | 4 |
| | Question 1 total:17 marks | |
| 2(a)(i) | <ul style="list-style-type: none">- try summary and some either-way offences- deal with sentencing- decide whether an either way case should be tried in the Magistrates' Court or the Crown Court- decide on bail applications- issue warrants for arrest or search | 3 |
| 2(a)(ii) | <ul style="list-style-type: none">- responsible for court administration- advises the bench on matters of law- advises the bench on evidence- advises the bench on procedure | 3 |

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| 2(b) | <ul style="list-style-type: none"> -determine the trial venue, i.e. Magistrates' or Crown Court - applies as Mei is being tried for burglary which is an either way offence | 2 |
| 2(c) | <ul style="list-style-type: none"> - Magistrates Courts Act 1980 s.19 - allocation guidelines - All cases are tried at appropriate level - Either-way cases should be tried summarily - Unless sentencing powers will be insufficient - Powers will be insufficient if outcome is likely to result in sentence more than 12 months for a single offence - Strength of the prosecution - Strength of the defence - Refer to definitive guidelines to assess likely sentence for the offence <p>Or credit newer version of guidelines (from 01/03/16): (- should be tried summarily (as above) unless:)</p> <ul style="list-style-type: none"> - outcome would clearly be a sentence in excess of the courts' powers for the offence concerned - after taking into account personal mitigation - and any potential reduction for a guilty plea; or - for reasons of unusual legal, procedural or factual complexity, the case should be tried in the Crown Court - exception likely to be rare and case specific - court should bear in mind its power to commit for sentence after trial - may retain jurisdiction notwithstanding that the likely sentence might exceed its powers - all parties should be asked by the court to make representations as to whether the case is suitable for summary trial - court should refer to definitive guidelines (if any) to assess the likely sentence for the offence in the light of the facts alleged by the prosecution, taking into account all aspects of the case including those advanced by the defence, including personal mitigation - Defendant to be warned – could be sent to Crown Court for sentencing if tried summarily | 8 |
| 2(d) | <p>In favour:</p> <ul style="list-style-type: none"> - speed – dealt with quicker in Magistrates' Court than in Crown Court - cost – cheaper - powers of sentence – limited sentencing powers - stress/formality – less stressful/formal <p>Against:</p> <ul style="list-style-type: none"> - lower acquittal rates – Magistrates seen to be 'case hardened' - complex evidence – judge better equipped to deal with/legally qualified - disputed evidence – can be excluded from jury but magistrates will have to try and ignore knowledge of the same | 4 |

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| 2(e) | -prima facie bail – presumption in favour of bail -right to bail does not apply where person charged with murder, attempted murder, manslaughter, rape or attempted rape and has a previous conviction for one or more -prima facie bail applies to Mei – charged with burglary and has never had any previous convictions | 3 |
| 2(f) | -para 2 part 1 Sch 1 BA 1976 OR s.114 The Coroners and Justice Act 2009 - substantial grounds for believing the Defendant will fail to surrender to custody - commit an offence whilst on bail - interfere with witnesses - for his own protection - Application – no suggestion here of anything but she Mei could try and contact Poppy | 6 |
| 2(g) | - appeal to the Crown Court - application served on prosecution within 24 hours' | 2 |
| Question 2 total:31 marks | | |
| 3(a) | - Evidence that the prosecution will use at trial | 1 |
| 3(b) | -Part 8 of the CPR 2015 -As soon as practicable / possible -No later than the beginning of the day of the first hearing | 3 |
| 3(c) | - <i>matters relating to the offence</i> - application – crime was committed on impulse, i.e. not planned by Mei - <i>matters relating to the offender</i> - application – Mei's first offence - application – Mei has caring responsibilities i.e. for her infant daughter - application – Mei has a responsible job, i.e. manager - <i>matters relating to the investigation</i> - application – Mei has cooperated with the police - <i>matters relating to future reform</i> - application – Mei intends to pay the money back - <i>matters relating to type of sentence</i> - application – effect of a custodial sentence on Mei's child and her employment | 10 |
| 3(d) | Identify the appropriate starting point (1 st part of table in Doc 4) – credit any reasonable application, e.g.: <ul style="list-style-type: none"> Limited damage or disturbance to property – nothing at the pizzeria is damaged Offence committed on impulse, with limited intrusion into property -she does not think through her actions and she does not damage anything at the property | 6 |

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| | <ul style="list-style-type: none"> Involved through coercion, intimidation or exploitation -she is getting the money for her brother who is being threatened to pay back a debt Therefore culpability is C and harm category 3 so range is discharge to low level community order <p>Consider effect of aggravating and mitigating factors (2nd part of table):</p> <ul style="list-style-type: none"> abuse of a position of trust – Mei is the Assistant Manager No previous convictions Offender has made voluntary reparations to the victim -she has offered to pay the money back to Poppy Good character Sole or primary carer for dependent relatives -shares custody of infant daughter <p>Sensible conclusion: e.g. due to mitigating factors likely to be discharge to low level community order (but any sensible conclusion credited)</p> | |
| 3(e) | -Crown Court - 15 days | 2 |
| Question 2 Total: 22 marks | | |