



## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2023

LEVEL 3 UNIT 3 – CRIMINAL LAW

### 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

In Section A some candidates provided only a short answer with little or no explanation of detail, required to score well.

For Section B, a thorough knowledge and understanding of the law was essential to then progress and apply the law. Those candidates who achieved low marks, did so because there was insufficient depth in their answer to award more than a few marks. Where candidates stated the law, they often failed to then apply the law thoroughly enough. This was particularly evident where the answers required identification and subsequent application of offences/defences which constituted several 'elements'. An example of this is in Section B Scenario 1 Q1(d) where many candidates did not apply the elements of the defence of duress thoroughly.

Often there was also a lack of correct legal terminology. An example of this is in Section A Q3, where some candidates did not mention the important legal terms of 'intention' and 'recklessness'.

Use of relevant case law/statute is also essential to score the higher marks, and many candidates did not mention these legal authorities to reinforce their answer(s).



## CANDIDATE PERFORMANCE FOR EACH QUESTION

### SECTION A

#### Question 1

Generally, well answered. Some candidates were not specific enough in identifying all three situations.

**Question 2** - Generally well answered.

**Question 3** - Some candidates failed to mention the legal terms 'intention', and 'recklessness'.

**Question 4** - Some candidates incorrectly explained the mens rea of attempts (the actus reus was asked for).

**Question 5** - Generally well answered.

#### Question 6

Many candidates incorrectly stated that steps must be taken to try and find an owner...when the correct answer is that it is only a belief that the person to whom the property belongs cannot be found by taking reasonable steps.

#### Question 7

Some candidates failed to identify that the defence is not available for offences of murder and attempted murder.

**Question 8** - Many candidates failed to identify the key elements of the defence of loss of control.

**Question 9** - Many candidates did not identify the relevant case law.

#### Question 10

Candidates were often not specific enough in identifying the justifications for strict liability offences.

## SECTION B

### Scenario 1

**Question 1(a)** This tested the candidates' ability to identify the offence of attempted theft and its constituent elements. The question was generally well answered.

**1(b)** Some candidates did not properly identify whether the offence had been committed, nor did they identify a relevant case in relation to the offence of 'attempt'.

**1(c)** - Some candidates did not identify the key elements of the defence of duress by threats.

Those candidates who correctly identified the defence of duress (by threats) often did not provide enough detail of the elements of the defence in order to score well.

**1(d)** - Many candidates did not apply the elements of the defence in sufficient detail.

### Question 2(a)

Many candidates did not identify the elements of the offence of basic criminal damage in detail.

### 2(b)

Many candidates did not apply the elements of the offence in detail, nor identify that Sam had been reckless in his actions.

**Question 3(a)** - Generally, well answered.

**3(b)** - Some candidates failed to apply all of the elements of theft to the circumstances.

This was the most popular question. Many candidates did not apply the law in sufficient detail to do well. The absence of case law in some answers was noticeable.

### Scenario 2

**Question 1(a)** - Generally, well answered.

**1(b)** - Some candidates did not apply the offence of murder thoroughly.

**1(c)** - Some candidates did not identify 'factual' and 'legal' causation'

**1(d)** -Some candidates did not identify that both Dele and Olga are the 'operating' and 'substantial' cause of the death.

**Question 2(a)** -Some candidates did not identify all of the elements of aggravated criminal damage.

**2(b)** - Some candidates did not identify that there was an intention to endanger life.



**Question 3** - Many candidates did not identify a case in relation to the term 'more than merely preparatory'.

**Question 4(a)** - Generally, well answered.

**4(b)** - Some candidates did not identify the principle of transferred malice, or that there was an intention to kill Martin (*mens rea* transferred to Tina).

Where candidates did not explain the law in sufficient detail, in order to score well, this had a knock-on effect where the candidate was then unable to apply the law with sufficient accuracy.

### **Scenario 3**

#### **Question 1(a)**

Generally well answered, although candidates often missed some of the elements of the offence of gross negligence manslaughter (e.g. the conduct can be an act or an omission).

**1(b)** - Some candidates did not apply all of the elements of the offence to the scenario.

**Question 2(a)** - Many candidates did not cite relevant case law.

**2(b)** - Some candidates did not identify that natural disasters can constitute a break in the chain of causation, or case law relevant to breaks in the chain generally.

**2(c)** - Many candidates were not specific enough in applying the legal rules. E.g. Medical treatment would have to be 'palpably' wrong – and relevant case law, such as *Jordan*[1956].

**Question 3(a)** - Many candidates did not identify relevant case law relating to the defence of self-defence.

**3(b)** - Generally, well answered.

Once again, it is often the lack of identification and application of elements of offences, (and defences) together with relevant case law – where candidates could improve.

**SUGGESTED POINTS FOR RESPONSE****JANUARY 2023****LEVEL 3 UNIT 3 – CRIMINAL LAW****SECTION A**

| <b>Question Number</b> | <b>Suggested Points for Responses</b>  | <b>Marks (Max)</b> |
|------------------------|--|--------------------|
| <b>1</b>               | <ul style="list-style-type: none"> <li>- Statutory duty</li> <li>- Special relationship (not simply parent/child etc)</li> <li>- Contractual duty</li> <li>- Assumption of responsibility</li> <li>- Creating a dangerous situation</li> <li>- Public office</li> </ul>  | <b>3</b>           |
| <b>2</b>               | <ul style="list-style-type: none"> <li>- Unlawful killing</li> <li>- Human being</li> <li>- Within the Queen's/King's peace</li> </ul>   | <b>3</b>           |
| <b>3</b>               | <ul style="list-style-type: none"> <li>- <i>Mens rea</i> is the 'guilty mind'</li> <li>- It can be intention</li> <li>- Intention can be direct or indirect (oblique)</li> <li>- <i>Mens rea</i> can be 'recklessness'</li> </ul>  | <b>3</b>           |
| <b>4</b>               | <ul style="list-style-type: none"> <li>- Criminal Attempts Act 1981, section 1</li> <li>- An act more than merely preparatory</li> <li>- To the commission of an indictable offence</li> <li>- Meaning of "act more than merely preparatory" sufficiently close to committing full offence</li> <li>- Case e.g. <u>Jones</u> (1990), <u>Campbell</u> (1991) Shivpuri</li> </ul>  | <b>3</b>           |
| <b>5</b>               | <ul style="list-style-type: none"> <li>- Intention or Recklessness</li> </ul>  | <b>2</b>           |
| <b>6</b>               | <ul style="list-style-type: none"> <li>- Believes in law he has the right to deprive the V of the property/D's property</li> <li>- Believes he would have had the consent of the victim</li> <li>- Believes that the person to whom the property belongs cannot be found by taking reasonable steps</li> </ul>   | <b>3</b>           |
| <b>7</b>               | <ul style="list-style-type: none"> <li>- Duress cannot be used for murder or attempted murder</li> <li>- D has been at fault/criminal association/participation</li> <li>- Case: e.g. <u>Howe</u> (1987), <u>Gotts</u> (1992)</li> </ul>   | <b>2</b>           |
| <b>8</b>               | <ul style="list-style-type: none"> <li>- Coroners and Justice Act 2009 s. 54 on loss of control</li> <li>- D's acts or omissions resulted from loss of control</li> <li>- Loss of control need not be sudden</li> <li>- There was a qualifying trigger</li> <li>- Coroners and Justice Act 2009 s. 55</li> <li>- Qualifying trigger can be fear of serious violence</li> <li>- Qualifying trigger can be anger/words or actions of extremely grave character that caused justifiable sense of being wronged</li> </ul> | <b>5</b>           |



|                                  |   |          |
|----------------------------------|---|----------|
|                                  | <ul style="list-style-type: none"> <li>- A reasonable person of D's age and sex with normal degree of tolerance and self-restraint might have acted the same (or similar way)</li> <li>- A.G. for <u>Jersey v Holley</u> (2005) – objective test or a similar case</li> </ul>   |          |
| <b>9</b>                         | <ul style="list-style-type: none"> <li>- Can be used as a defence for offences of specific or basic intent</li> <li>- No liability if D did not form the required <i>mens rea</i></li> <li>- Example <u>Kingston</u> (1994)</li> </ul>  | <b>3</b> |
| <b>10</b>                        | <ul style="list-style-type: none"> <li>- Forces people to comply with regulatory requirements</li> <li>- Minor nature of majority of strict liability offences means little stigma is attached to the offence</li> <li>- Proving fault often impossible</li> <li>- Saves court time and money</li> </ul> <p>Importance of protecting public outweighs requirement of proof of <i>mens rea</i></p> | <b>3</b> |
| <b>Section A Total: 30 marks</b> |   |          |

#### Section B - Scenario 1

| Question Number | Suggested Points for Responses   | Marks (Max) |
|-----------------|--|-------------|
| <b>1(a)</b>     | 1 Attempted theft<br>2 S1 Criminal Attempts Act 1981<br>3 It must be an act<br>4 More than merely preparatory<br>5 Not an omission<br>6 It must be an indictable or either way offence<br>7 Must be intention to commit the offence  | <b>6</b>    |
| <b>1(b)</b>     | <ul style="list-style-type: none"> <li>• He intended to take the wage packets/steal them (inference of permanency needed)</li> <li>• He was approaching the Wages Clerk's desk</li> <li>• He changed his mind to carry out the act</li> <li>• Reasoned conclusion - Is it more than merely preparatory?</li> <li>• E.g. case <u>Campbell</u> (1991)</li> </ul>   | <b>4</b>    |
| <b>1(c)</b>     | 1 The defence is duress by threats<br>2 Must be threat of death or serious injury to himself or someone he regards himself responsible for<br>3 Must be threat to commit a particular crime<br>4 A sober person of reasonable firmness would have responded as D did<br>5 The reasonable man shares D's characteristics<br>6 D must be overborne by the threat<br>7 Not a defence to murder or attempted murder (must be both) | <b>6</b>    |
| <b>1(d)</b>     | <ul style="list-style-type: none"> <li>• No threat to commit a particular crime/ Must relate to a specific offence</li> <li>• Threat not immediate and D could realistically seek help</li> <li>• No evidence that D overborne by the threat</li> <li>• Reasonable man probably would not have done as D did</li> </ul>  | <b>4</b>    |



|                                   |  |          |
|-----------------------------------|--|----------|
|                                   | <ul style="list-style-type: none"> <li>• D voluntarily associated with violent criminals</li> <li>• Eg Hudson &amp; Taylor (1971)/Hasan (2005)</li> <li>• Conclusion that the defence would probably fail</li> </ul>   |          |
| <b>Question 1 Total: 20 marks</b> |  |          |
| <b>2(a)</b>                       | 1 Basic criminal damage<br>2 S1(1) Criminal Damage Act 1971<br>3 Destroy or damage property belonging to another<br>4 Must have intention or be reckless<br>5 Damage does not have to be irreparable<br>6 Whether there is damage depends on time and cost of repairing  | <b>6</b> |
| <b>2(b)</b>                       | <ul style="list-style-type: none"> <li>• The ornament is property belonging to another</li> <li>• The ornament has been destroyed</li> <li>• Sam has been reckless</li> <li>• Recklessness is taking an unjustified risk</li> <li>• It is a subjective test</li> </ul>   | <b>4</b> |
| <b>Question 2 Total: 10 marks</b> |  |          |
| <b>3(a)</b>                       | 1 S1 Theft Act 1968<br>2 Appropriation<br>3 Property<br>4 Belonging to another<br>5 Intention to permanently deprive<br>6 Dishonesty   | <b>6</b> |
| <b>3(b)</b>                       | <ul style="list-style-type: none"> <li>• The box of hats was property belonging to another</li> <li>• Items left outside charity shop belong to the donor until charity shop takes possession</li> <li>• Sam appropriated hats</li> <li>• Sam was dishonest</li> <li>• Sam intended to permanently deprive</li> <li>• One relevant case Eg: Ghosh(1982) as amended by Ivey (2017), Barton and Booth (2020), Basildon Magistrates' Court (Rickets) (2010), Oxford v Moss(1978)</li> </ul> | <b>4</b> |
| <b>Question 3 Total: 10 marks</b> |  |          |
| <b>Scenario Total: 40 marks</b>   |  |          |

## Section B - Scenario 2

| Question Number                   | Suggested Points for Responses   | Marks (Max) |
|-----------------------------------|--|-------------|
| 1(a)                              | 1 Murder<br>2 Unlawful killing<br>3 Human being<br>4 Queen's peace<br>5 Malice aforethought<br>6 Intention to kill<br>7 Intention to cause GBH<br>8 Intention can be direct or oblique   | 6           |
| 1(b)                              | <ul style="list-style-type: none"> <li>• Dele poisoned Victor who is a human being</li> <li>• Unlawful killing</li> <li>• He had the intention to kill</li> <li>• Took place during King's/Queen's peace</li> <li>• The death is caused by Dele's actions</li> <li>• Defined as 'operating' and 'substantial cause'</li> <li>• Cases can include Dalloway (1847) Pagett (1983); Cheshire (1991), Blaue (1975)</li> </ul> | 4           |
| 1(c)                              | <ul style="list-style-type: none"> <li>• Factual causation e.g. but for test</li> <li>• e.g. White (1910) or Pagett (1983)</li> <li>• Legal causation e.g. Defined as 'operating' and 'substantial cause'</li> <li>• Cases can include Dalloway (1847) Cheshire (1991), Blaue (1975)</li> <li>• Need not be 'sole' cause of death</li> </ul>   | 3           |
| 1(d)                              | <ul style="list-style-type: none"> <li>• Dele and Olga are the factual causation following but for test</li> <li>• Their actions are the 'operating' and 'substantial cause' of death</li> <li>• Both Olga and Dele caused Victor's death</li> </ul>   | 3           |
| <b>Question 1 Total: 16 marks</b> |  |             |
| 2(a)                              | 1 Section 1(2) of Criminal Damage Act 1971<br>2 Destroys or damages property<br>3 Property belonging to themselves or another<br>4 Without lawful excuse<br>5 Intention or recklessness as to damage to property<br>6 Intends to endanger life/the life or another through the damage<br>7 Is reckless as to whether life of another is endangered<br>8 Life does not actually have to be endangered                     | 6           |
| 2(b)                              | <ul style="list-style-type: none"> <li>• By cutting the brake cables, Dele damages property</li> <li>• No lawful excuse</li> <li>• Breaks cables (property)</li> <li>• Has the intention to damage it (intentionally cuts them)</li> <li>• Has the intention to endanger life</li> <li>• Webster (1995), Warwick (1995) (i.e. by means of...)</li> </ul>   | 4           |
| <b>Question 2 Total: 10 marks</b> |  |             |



|                                  |   |          |
|----------------------------------|---|----------|
| <b>3</b>                         | 1 AR: act must be more than merely preparatory<br>2 AR: an act, not an omission<br>3 Dele's acts are more than preparatory as it leads to a crash<br>4 Mention a case; e.g Jones (1990), Campbell (1991)<br>5 MR: intention to commit the full/complete offence<br>6 MR: Must be intention, normally recklessness not sufficient<br>7 Dele has the intent to kill<br>8 Cases can include Woollin (1998), Nedrick(1986)<br>9 Mention a case; might include Whybrow (1951) or Shivpuri (1986)<br>10 S.1 Criminal Attempts Act 1981<br>11 Conclusion that the offence of attempted murder has been committed | <b>8</b> |
| <b>4(a)</b>                      | <ul style="list-style-type: none"> <li>• Tina died</li> <li>• Unlawful killing</li> <li>• of a human being</li> <li>• Crash caused by Dele's actions (factual and legal causation)</li> </ul>   | <b>2</b> |
| <b>4(b)</b>                      | <ul style="list-style-type: none"> <li>• Intention to kill</li> <li>• MR can be transferred from intended target to another V</li> <li>• Intended to kill Martin, MR transfer to Tina</li> <li>• Use of a case e.g. Latimer (1886)</li> </ul>   | <b>4</b> |
| <b>Question 4 Total: 6 marks</b> |   |          |
| <b>Scenario Total:40 marks</b>   |   |          |

### Section B - Scenario 3

| Question Number                   | Suggested Points for Responses   | Marks (Max) |
|-----------------------------------|--|-------------|
| 1(a)                              | 1 D liable for gross negligence manslaughter<br>2 Duty of care<br>3 Breach of that duty<br>4 Conduct can be an act or omission<br>5 Must be risk of death<br>6 Breach must have caused death<br>7 Breach was grossly negligent<br>8 D does not have to foresee death or bodily harm<br>9 It is an objective test (the reasonable person had to have foreseen an obvious and serious risk of death/harm)<br>10 Mention of a case e.g. Adomako (1994), Bateman (1925)  | 8           |
| 1(b)                              | 1 Duty existed; voluntary assumption of duty and/or special relationship<br>2 Duty breached: left him alone<br>3 Created risk of death by failing to give Vlad his medication<br>4 He was aware of the risk<br>5 Led to death: died due to no medication/collapse<br>6 Grossly negligent - objective standard  | 5           |
| <b>Question 1 Total: 13 marks</b> |  |             |
| 2(a)                              | <ul style="list-style-type: none"> <li>• Legal causation must be established to find liability for result crimes</li> <li>• Legal causation means D's act had to be significant and operating cause of death</li> <li>• Does not need to be sole cause of death</li> <li>• Must be more than minimal</li> <li>• There must be no intervening act (novus actus interveniens)</li> <li>• A case, might include Smith (1959); Pagett (1983)</li> </ul>  | 5           |
| 2(b)                              | 1 Causation may be broken by an intervening act<br>2 Refusal of medical treatment/ aggravation of injuries by V<br>3 Thin skull rule<br>4 Injuries sustained during escape<br>5 Negligent or poor medical treatment<br>6 Natural disasters e.g. acts of God<br>7 Case: e.g. Blaue (1975) or other relevant case to illustrate an example above.  | 6           |
| 2(c)                              | <ul style="list-style-type: none"> <li>• Medical treatment does not normally break the chain of causation</li> <li>• Not same rules as for other intervening events</li> <li>• Medical treatment would have to be 'so independent of D's acts and in itself so potent in causing death'</li> <li>• R v Cheshire (1991) or another case e.g. Smith (1959)</li> <li>• Exceptional cases yes, palpably bad (e.g. Jordan (1956))</li> <li>• Delay of the ambulance would not break the chain of causation</li> </ul> | 5           |
| <b>Question 2 Total: 16 marks</b> |  |             |



|                                   |   |          |
|-----------------------------------|---|----------|
| <b>3(a)</b>                       | 1 Self defence<br>2 Response to an actual or perceived threat<br>3 Reasonable force<br>4 Reasonableness of force judged on facts and circumstances as D honestly believed them to be<br>5 S. 76 of Criminal Justice and Immigration Act 2008<br>6 Protect himself<br>7 Common law right to protect oneself<br>8 Case e.g. Malnick v DPP (1989) or Martin (2000)                 | <b>7</b> |
| <b>3(b)</b>                       | <ul style="list-style-type: none"> <li>• Leo hit Tom, right to defend himself</li> <li>• Was the force used reasonable?</li> <li>• Objective test/Reasonable person</li> <li>• Punched and kicked Leo repeatedly – probably excessive/unreasonable force</li> <li>• Defence will fail/unlikely to succeed</li> <li>• Case e.g. Malnick v DPP (1989) or Martin (2000)</li> </ul> | <b>4</b> |
| <b>Question 3 Total: 11 marks</b> |   |          |
| <b>Scenario Total: 40 marks</b>   |   |          |