

CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS

SEPTEMBER 2020

LEVEL 3 - UNIT 11 – CRIMINAL LITIGATION

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested answers is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the September 2020 examinations. The suggested answers set out a response that a good (merit/distinction) candidate would have provided. The suggested answers do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed by the suggested answers.

Candidates and learning centre tutors should review the suggested answers 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

Overall, the paper was done reasonably well by the majority of candidates. Some candidates excelled and had prepared adequately for the exam while others were very under prepared and either had not put the work in or were not ready to sit the paper. Previous examinations show that candidates generally answer certain topics better than others. In this examination the Chief Examiner felt that candidates generally had a good understanding of most of the topics assessed and picked up some marks across most of the questions.

It is to be noted that this paper did not contain as many questions on some of the topics which are more commonly examined, such as arrest and detention. These topics tend to prove popular with candidates. The lack of questions on these popular topics did not adversely affect performance. This paper saw more of a focus on some procedural aspects such as allocation and trial and although many candidates did reasonably well on these questions, candidates must revise the detail needed to explain the various procedural stages to ensure that they can pick up the number of marks available for such questions. It is also to be noted that all classifications of offence are examinable. The Edna case study centred on summary only offences and

some of the procedural questions related to summary matters. Candidates should ensure that they use the case study to inform their revision – looking at key points such as the classification of offences featured in these materials.

Candidates and centres should remember that every learning outcome in the unit specification has to be examined and should therefore be revised. This includes disclosure, appeal, sentencing and allocation. It is highly recommended that candidates attempt past papers and carefully look at the suggested answers, in particular what each question asks, and the kind of answer expected to see the level of detail required.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Some questions were not answered as well as they might have been. Specifically, these were:

Question1(d) – trial procedure

There was mixed performance in this question. It was a straightforward question requiring candidates to describe trial procedure. Had candidates prepared effectively for the exam then full marks should have been achievable. Many candidates understood what the question required and achieved good marks. Several candidates gave a detailed explanation of the trial process and scored high marks. Two common reasons for lower marks were:

1. Firstly, where candidates gave answers which described the correct procedure but lacked the detail required. For example, being too brief and stating that the prosecution would introduce its evidence and then the defence would introduce their evidence. This would not achieve as many marks as detailing the stages in the process more specifically, i.e. the prosecution would introduce its case, calling its witnesses and carrying out examination in chief of its witnesses. This would be followed by cross-examination of those witnesses by the defence and then finally an opportunity for the prosecution to repair some of the damage done by cross-examination by re-examining their witnesses. Stronger candidates also included detailed steps such as the opportunity for the defence to make a half time submission of no case to answer (R v Galbraith).
2. Secondly, where candidates confused trial procedure with allocation. Candidates are advised to carefully read the question and to revise effectively to ensure that they understand what a not guilty plea and trial means compared to an allocation hearing. The candidates were told that these were summary only offences and candidates ought to be aware that allocation only applies to either way offences. Summary matters have not been examined as frequently as either way offences but they are examinable and in practice candidates will routinely deal with summary matters and summary trials.

Question 2(b) - sentencing factors

Candidates seemed ill-prepared for this question. Candidates should revise the sentencing factors and the governing statutory provision.

Question 4(a) and 4(b) – allocation.

Candidates should prepare effectively for questions concerning allocation and this includes purpose, procedure and factors to be considered by the court in deciding on venue. Had candidates prepared effectively for the exam then these questions should not have posed difficulties.

One point which the Chief Examiner wishes candidates and centres to note is to read the question carefully to ensure that where the question calls for an exercise of judgement in applying the question to the case study, or giving advice specific to a character, that they do this and do not simply answer in a general sense. In some questions, such as 1ci and 1cii, candidates knew the material but not all candidates exercised the judgement required to ensure that their answers related to the case study or the case of Edna. For example, in 1cii, some candidates suggested conditions which would not be likely used in Edna's case such as a surety. Candidates are reminded to ensure that they read the question closely and if the question asks them to exercise judgement in applying their answer to the case study, or to a character, then they need to ensure that they do this to pick up the maximum marks rather than just giving a general response.

Questions answered well

The Chief Examiner was impressed with the way in which candidates dealt with question 2a which required them to draft the contents only of a letter giving advice on funding. This is not the style of question which candidates are used to seeing at Level 3, but most candidates performed reasonably well and scored a good number of marks on this question.

SUGGESTED ANSWERS

LEVEL 3 - UNIT 11 – CRIMINAL LITIGATION

Question 1(a)

One further classification of offence is those that are triable either way, an example of which is theft. The final classification of offence is indictable only, an example of which is murder.

(b)

At the first hearing Edna enters two pleas – guilty to the highway obstruction charge and not guilty to the assault charge. Following the pleas, other matters that the court would attend to at the first hearing could be any of the following:

- fixing a date for trial for the assault matter;
- sentencing the obstruction matter or adjourning it for sentence;
- dealing with case management issues;

- deciding the issue of bail.

1(c)(i)

Two grounds that the prosecution could use to oppose bail in Edna's case would be that she has a number of previous convictions for failing to surrender to custody, some of which are recent. This means that having been granted bail previously, Edna has failed to surrender to custody and there is a risk that if released on bail for this offence, she would do so again. (para 2 Part 1 Sch 1 Bail Act 1976) A second factor could be that there is a risk that she would commit further offences if released on bail, as she has a large number of previous convictions.

1(c)(ii)

Possible conditions that the defence could put forward to mitigate the risk of Edna failing to surrender to custody would be a condition of residence; reporting to a police station; or electronic tagging.

1(d)

The charge will be read out and a plea taken. The prosecution will then give an opening speech, which will be an outline of the facts of the offence and will set the scene. The prosecution then presents its evidence.

Firstly, the prosecution will call the live witnesses, who will be examined in chief and may thereafter be cross-examined by the defence and re-examined by the prosecution. The prosecution then reads any agreed written evidence to the court. Once the prosecution has finished presenting their evidence, the defence may submit that there is no case to answer.

If the case proceeds, the defence will make an opening speech. The defence will then present its evidence. It may call the accused, together with any other live witnesses, who will be examined in chief and may thereafter be cross-examined by the prosecution and re-examined by the defence. The prosecution then gives a closing speech, followed by the defence.

Question 2(a)

As you were arrested, you are entitled to receive free legal advice at the police station, under the Police Station Advice and Assistance Scheme. As our firm holds a contract with the Legal Aid Agency, then advice provided by our solicitors is covered by that scheme. This advice is not means tested, which means that you are entitled to this regardless of your income, capital or savings. There is nothing for you to pay for the advice which you received from me at the police station.

In order to represent you at trial on a publicly funded basis, our firm will need to apply for a representation order on your behalf. The application is made to the Legal Aid Agency. You must satisfy two tests in order to be granted a representation order. These are the interests of justice test and the means test. In your case, it is likely that the interests of justice test would be met for two reasons. One is that there is a real risk of a custodial sentence due to your previous convictions, both the number of these and the fact that some of them are similar in nature to the offence with which you are currently charged. A second reason is that, as you have pleaded not guilty, you will

require a solicitor to conduct cross examination of witnesses for you at trial. This is especially relevant in your case as you are accusing PC Moran of lying. There is also a means test to pass and it is likely that you will automatically meet this test, as you have indicated that you are in receipt of pension credit, which is a passporting benefit.

2(b)

The court will take a structured approach to sentence based upon the guidelines for the offence, section 143 Criminal Justice Act (CJA) 2003. The court will first assess the seriousness of the offence based on Edna's culpability, the harm caused and any aggravating factors. This enables the court to ascertain the appropriate starting point for the sentence and the range of sentence available. The court will then consider any personal offender mitigation before determining the nature and length of any sentence.

2(c)

The purpose of the plea in mitigation is for the defence to try to persuade the court to sentence the defendant as leniently as possible.

(d)

You could have identified any three of the following mitigating factors:

Relating to the offence (assault):

- that it appears to have been committed on impulse;
- that it does not appear to have been premeditated;
- that there is only minor and no lasting injury to the victim.

Relating to the offender:

- Edna's age, as she is 78 years old;
- the fact of her recent cancer diagnosis;
- the fact that she is a full-time carer for her infirm and terminally ill sister

Question 3(a)

The custody officer can authorise Keanu's detention, without charge, for the purposes of obtaining evidence by questioning.

(b)

The initial time limit that a suspect may be detained for following arrest, is 24 hours from the time that they were brought to the police station. This is provided for by section 41 Police and Criminal Evidence Act (PACE) 1984, as amended by section 7 CJA 2003. This is subject to periodic review and it can be extended by a superintendent or by application to magistrates.

(c)(i)

The police may seek authorisation to detain Keanu for a further period, pursuant to section 42(1) PACE 1984. This only applies to suspects who are detained in connection with an indictable offence. As Keanu has been detained in connection with offences that are triable either way, these may be tried on indictment and therefore section 42(1) applies.

3(c)(ii)

The police may seek authorisation to detain Keanu for a further 12 hours.

3(d)

Under Section 34 Criminal Justice and Public Order Act 1994, the implication for Keanu is that the court may draw conclusions from the fact that he offered no information to the police in interview, if he later relies on a fact in his defence at trial which he could reasonably have mentioned before, and which he now relies upon to defend himself.

Question 4(a)

The offences that Keanu has been charged with can be tried either way, i.e. summarily in the magistrates' court or on indictment in the Crown Court. The purpose of the allocation hearing is to determine the venue for trial. The magistrates make the initial decision as to where the case ought to be tried, after hearing from the prosecution and any representations from the defence (if they wish). If the magistrates decide that the case should be tried on indictment, then Keanu will have no choice and the case will be sent to the Crown Court for trial. If the magistrates are content to keep the charges in the Magistrates' Court, then Keanu will have a choice; he can choose trial by jury or consent to be tried summarily before the magistrates' court.

(b)

The magistrates will apply the statutory factors in section 19 Magistrates' Court Act 1980 as amended by Schedule 3 CJA 2003. They will also apply the Sentencing Council's allocation guideline and have regard to relevant sentencing guidelines. They will listen to any representations made by the prosecution and defence. They will consider any aggravating features of the offence(s) which make the offence(s) more serious. They will consider whether the Magistrates' Court's maximum sentencing powers will be sufficient.

(c)(i)

As Keanu is charged with two either way offences, the maximum sentence that the magistrates could award would be 12 months imprisonment (6 months for each offence).

(ii)

If Keanu were found guilty of just one charge (affray), then the maximum sentence available to the magistrates would be six months imprisonment.

Question 5(a)

It is compulsory for Keanu to file a defence statement as his case is being tried in the Crown Court, under section 5 Criminal Procedure and Investigations Act (CPIA) 1996. It must be filed within 28 days of initial disclosure by the prosecution.

5(b)(i)

The form and content of a defence statement is governed by section 6A CPIA 1996. A defence statement must set out the nature of the defence, including any particular defences on which a defendant intends to rely. It will need to outline the matters of fact on which the defendant takes issue with the prosecution, with reasons. It should also set out particulars of the matters of fact on which the defendant intends to rely, and indicate any point of law which he wishes to make and any authority relating to that.

(ii)

Keanu should outline the specific defence relied upon. That may be either mistaken identity in relation to the assault charge or duress in relation to the affray charge. He will need to outline the fact that he disputes assaulting the store detective and that he contends that he has been mistakenly identified as the perpetrator of the assault. In relation to the affray charge, he accepts being in the group in the department store at the time of the incident involving the MP, but he contends that his involvement in this was due to duress following the intimidation used by the other members of the group. In relation to the mistaken identity defence, Keanu should outline that he is seeking to have the identification evidence excluded under section 78 PACE 1984, for breaches of Code D. If he intends to call defence witnesses, he would need to give details of those in accordance with section 6C CPIA 1996.

5(c)

Keanu may appeal to the Court of Appeal within 28 days of the date on which sentence is passed under Section 1 Criminal Appeal Act 1968. Leave to appeal is required.